

# OVERSIGHT OF CERCLA IMPLEMENTATION

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## HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND THE  
ECONOMY

OF THE

COMMITTEE ON ENERGY AND  
COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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JULY 13, 2016

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## OVERSIGHT OF CERCLA IMPLEMENTATION

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WEDNESDAY, JULY 13, 2016

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:03 a.m., in room 2123 of the Rayburn House Office Building, Hon. John Shimkus (chairman of the subcommittee) presiding.

Members present: Representatives Shimkus, Harper, Whitfield, Murphy, McKinley, Johnson, Bucshon, Flores, Hudson, Tonko, Schrader, Green, McNerney, and Pallone (ex officio).

Staff present: Will Batson, Legislative Clerk, Energy and Power; Rebecca Card, Assistant Press Secretary; A.T. Johnston, Senior Policy Advisor; David McCarthy, Chief Counsel, Environment and the Economy; Tina Richards, Counsel, Environment; Chris Sarley, Policy Coordinator, Environment and the Economy; Dan Schneider, Press Secretary; Jeff Carroll, Democratic Staff Director; Jacqueline Cohen, Democratic Senior Counsel; Timia Crisp, Democratic AAAS Fellow; Tiffany Guarascio, Democratic Deputy Staff Director and Chief Health Advisor; Rick Kessler, Democratic Senior Advisor and Staff Director, Energy and Environment; Dan Miller, Democratic Staff Assistant; Alexander Ratner, Democratic Policy Analyst; Andrew Souvall, Democratic Director of Communications, Outreach, and Member Services; Tuley Wright, Democratic Energy and Environment Policy Advisor; and C.J. Young, Democratic Press Secretary.

Mr. SHIMKUS. If I can get my colleagues to take their seats, we will call the hearing to order.

First of all, just for our guests, the way we will operate is we will do our opening statements. We do 5 for the chairman, 5 ranking, and then the full committee chairman, full committee ranking member, so there will be 10 on each side.

Then, we will turn to our first panel. The first panel will give their opening statements. It is the tradition of this committee not to engage in questions afterwards. We will receive your testimony and then we will bring up the EPA on the overall generic debate on the hearing, which is in the Superfund et al, the general Superfund hearing.

So, with that, I will recognize myself for 5 minutes.

**OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

I would like to welcome everyone this morning. As we take another look today at CERCLA, which is the Superfund law, today our focus will be on how the Superfund program is being implemented. Hopefully, our witnesses can share with us what worked but, more likely, we will need to take a look at what doesn't work. We also are looking for suggestions on how we make the program better.

CERCLA or Superfund governs the cleanup of hazardous waste sites, as well as accident spills and other emergency releases of pollutants and contaminants into the environment. The program is implemented by EPA in cooperation with the States and tribal governments. And in implementing CERCLA, EPA also delegates certain authority to the Regional Administrators.

One of the key issues we intend to look at today with Mr. Stanislaus is whether the level of delegation is appropriate and whether there is adequate oversight of the Regional Administrators by the EPA headquarters.

It has been over 35 years since CERCLA was enacted. A lot has changed since then. When CERCLA was enacted, very few States had their own cleanup programs. What we are looking at today is, after all that time, how is it going? Are sites getting cleaned up in a timely manner? And if not, why not?

We need to assess whether States should have a more significant role in CERCLA cleanups, and are there cleanups that are best handled entirely by the States? There is a lot of process involved with CERCLA cleanups. We need to take a serious look at whether that process is working or whether it encourages or impedes timely and efficient cleanup.

I would like to welcome my colleagues, Ann Wagner and Lacy Clay. We also welcome back to the committee Mathy Stanislaus, the Assistant Administrator from the recently renamed Office of Land and Emergency Management.

And we welcome our second panel, who will walk us through how public and private stakeholders also participate in the implementation of the Superfund Program. We welcome Ms. Brittain from the State of Oklahoma, who is here on behalf of a good friend of the subcommittee ASTSWMO. Ms. Brittain will, hopefully, talk to us about how far States have come with developing cleanup programs and whether the current role for States in CERCLA cleanup is appropriate.

We also welcome Ms. Horinko, who is a former head of EPA's Office of Solid Waste and Emergency Response. Ms. Horinko has been in the trenches at EPA with respect to CERCLA and can share with us her opinion of what works and what doesn't, as well as suggestions for moving forward.

We also have today with us Mr. Nadeau, thank you, an attorney with over 30 years of experience, representing potentially responsible parties or, as we know them, PRPs, Superfund sites around the country.

And last but not least, we will hear from Mr. Spiegel, the Executive Director of the Edison Wetlands Association, which has done a lot of work restoring hazardous waste sites in New Jersey.

So, we welcome everyone.

And just on the aside, with my friends, obviously, and colleagues, in the metro St. Louis areas, Members Ann Wagner and Lacy Clay, the Nation's Superfund legacy is part of a response to our nuclear legacy, which was implemented to make sure we saved hundreds of thousands of lives in the invasion of Japan and development of the nuclear weapon and that was successful in saving American lives. But there is still a legacy around the country, and my colleagues will talk about the site in St. Louis Metropolitan area. But there are sites like these all over the country and it is still part of our responsibility to help move forward and remediate these locations as soon as possible. So, I appreciate them being there.

[The prepared statement of Mr. Shimkus follows:]

#### PREPARED STATEMENT OF HON. JOHN SHIMKUS

I would like to welcome everyone this morning as we take another look today at CERCLA. Today our focus will be on how the Superfund program is being implemented—hopefully our witnesses can share with us what works but more likely we will need to take a look at what doesn't work. We are also looking for suggestions as to how we can make the program work better.

CERCLA or Superfund governs the cleanup of hazardous waste sites, as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. The program is implemented by EPA in cooperation with the States and tribal governments and in implementing CERCLA, EPA also delegates certain authority to the Regional Administrators. One of the key issues we intend to look at today with Mr. Stanislaus is whether the level of delegation is appropriate and whether there is adequate oversight of the Regional Administrators by EPA headquarters.

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I would like to welcome my colleagues Ann Wagner and Lacy Clay. We also welcome back to the committee Mathy Stanislaus the Assistant Administrator from the recently re-named Office of Land and Emergency Management and we welcome our second panel who will walk us through how public and private stakeholders also participate in the implementation of the Superfund program. We welcome Ms. Brittan from the State of Oklahoma who is here on behalf of a good friend of the subcommittee, ASTSWMO. Ms. Brittan will hopefully talk to us about how far States have come with developing cleanup programs and whether the current role for States in CERCLA cleanups is appropriate. We also welcome Ms. Horinko, who is the former head of EPA's Office of Solid Waste and Emergency Response. Ms. Horinko has been in the trenches at EPA with respect to CERCLA cleanups and can share with us her opinion of what works and what doesn't as well as suggestions for moving forward. We also have with us today, Mr. Nadeau, an attorney with over 30 years of experience representing potentially responsible parties or PRPs at Superfund sites around the country. And last, but not least, we will hear from Mr. Spiegel, the Executive Director of the Edison Wetlands Association which has done a lot of work restoring hazardous waste sites in New Jersey.

So, welcome everyone.

Mr. SHIMKUS. I yield back my time, and I now yield to the ranking member, Mr. Tonko, from New York.

**OPENING STATEMENT OF HON. PAUL TONKO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. TONKO. Thank you, Mr. Chair, for holding today's very important hearing on the Superfund program.

I also want to thank our colleagues, Ms. Wagner and Mr. Clay, and other witnesses for their testimony here this morning and our other witnesses that will, again, offer testimony.

Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act, commonly known as Superfund more than 35 years ago but communities across our country are still dealing with the legacy of toxic waste.

EPA has estimated that over 50 million people live within 3 miles of a Superfund National Priorities List Site or a Superfund Alternative Approach site. Despite successful remediation at a number of sites, there is still much work to do and too few dollars available to do it.

At our hearing last year, GAO provided testimony that there are thousands of contaminated sites on Federal land, the majority of which are abandoned mines. Federal agencies do not even have accurate inventories of these sites, let alone a plan or the funding needed to clean them up. Agencies feel like they have been left holding the bag for the cleanup, despite not being involved in causing the contamination. This is emblematic of the issue with the Superfund program. Too much of the burden of cleaning up after private entities has fallen upon the public at large. The cleanup of Non-Federal National Priorities List Sites is funded by potentially responsible parties that are liable for conducting or paying for the cleanup. When such parties cannot be identified or are financially unable to perform the cleanup, EPA is authorized to pay for it. CERCLA created the Superfund Trust Fund for these cases. However, the tax to fund the Trust Fund expired in 1995. For years, appropriations from the General Fund have been the largest source of revenue for the Trust Fund. There are over 1300 sites on the National Priorities List, with more being added each year, despite declining funding.

From 1999 to 2013, the total number of non-Federal sites on the National Priorities List remained relatively constant, while the number of completed projects generally declined on an annual basis. This should not come as a completely surprise, since appropriations declined during this time but we cannot lose sight of the polluter pays principle that has guided this program since its inception.

Ultimately, I believe there are two steps that must be taken to strengthen this given program. First, ensuring that the Trust Fund is supported by polluting industries to help clean up existing orphaned sites. Second, to limit the number of new sites being created in the first place, be ensuring that businesses that engage in activities that regularly lead to serious contaminations have the financial assets in place before waste is generated to cover the cost to clean up a site, should it be necessary.

With the passage of Superfund, we made a commitment to identify and clean up contaminated properties. We should fulfill that commitment but the reality is we need more funding and assurances in order to do it. When sites are cleaned up, the surrounding



community benefits from a cleaner, healthier environment. And returning abandoned contaminated land to productive use improves the local economy.

So, I again thank all for participating in the hearing this morning. I look forward to your testimony on this important issue.

And with that, Mr. Chair, I yield back.

Mr. SHIMKUS. The gentleman yields back his time. The Chair looks to the majority side to see if anyone else wishes to make an opening statement.

Seeing none, the Chair then turns to the minority side. The Chair recognizes the ranking member of the full committee, Mr. Pallone, for 5 minutes.

**OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PALLONE. Thank you, Mr. Chairman. Thanks for calling this hearing to bring much needed attention to the Superfund Program.

The Superfund Program is critical to cleaning up the most toxic sites across our country and these sites are shockingly common in my home State of New Jersey. Roughly 50 percent of the population lives within three miles of Superfund site.

And I want to welcome not only our Missouri colleagues but also Bob Spiegel of the Edison Wetlands Coalition, which has been a tremendous ally for many years in the fight to ensure fast and thorough cleanup of contaminated sites in my home State of New Jersey.

The contaminants at Superfund sites have been shown to cause cancer, birth defects, infertility and other serious health problems. According to EPA, cleanups through the National Priority List and Superfund Alternatives Program have brought human exposure to contaminants under control at over 1400 sites around the Nation but the impact of Superfund goes well beyond these funded cleanups, thanks to a provision of the law that allows EPA to recover treble damages or three times the cost of cleanups when the agency carries out a cleanup on its own. And this provision has encouraged countless other cleanups.

But there are still so many sites nationwide and in New Jersey, which has more sites than any other State, that will need funding for cleanup in the future. Unfortunately, funding for these cleanups has dropped dramatically since the Superfund tax expired in 1995, meaning fewer cleanups were started and even fewer are finished. Too many communities are waiting too long for cleanups. The threat that EPA will come in and clean up the site and the threat of treble damages is now all but extinguished by the lack of funds and the cleanups that are being done, it seems, are not as robust as they once were. In many cases, remedies are selected based on available funds, rather than risk.

And I have personally visited many of these sites and have seen firsthand the impact a contaminated site can have on a community. Nothing but a full and timely cleanup can restore these communities.

We have to provide the program the resources it desperately needs. For years, I have introduced a Superfund Polluter Pays Act,

which would reauthorize the original Superfund fees and make polluters, not taxpayers, pay the cost of cleaning up Superfund sites. Congress needs to reinstate the Polluter Pays taxes so those industries most responsible for polluting our land and water are held responsible for cleaning up our toxic legacy, a legacy that severely affects New Jersey and many other States around the Nation.

Now, that is only fair because restoring the polluter pays principle to this program would reduce pressures on the Federal budget and lead to faster cleanup of these toxic and dangerous sites.

Now, I understand that reinstating this tax is not within the committee's jurisdiction and some of my colleagues will look for solutions we can offer as a committee to strengthen Superfund. One thing we can do within our committee's jurisdiction is to encourage EPA's efforts to establish financial responsibility requirements to the most polluting industries and those requirements can stop the proliferation of new orphaned Superfund sites, which hurt public health and cost the taxpayers millions of dollars.

But the main problem facing Superfund is the expiration of the polluter pays tax and the most important thing we can do in Congress is reinstate. Cleaning up toxic Superfund sites not only reduces health risks, it also helps create jobs during the cleanup and allows for redevelopment of the land, once the cleanup is completed. We should also report cleanups of these contaminated sites and should ensure that these efforts are appropriately funded.

[The prepared statement of Mr. Pallone follows:]

#### PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

I thank the chairman for calling this hearing to bring much needed attention to the Superfund program. As many of you know, the Superfund program is critical to cleaning up the most toxic sites across our country. These sites are shockingly common—in my home State of New Jersey, roughly 50 percent of the population lives within three miles of a Superfund site.

I want to welcome, not only our Missouri colleagues, but also Bob Spiegel of the Edison Wetlands Coalition, who has been a tremendous ally for many years in the fight to ensure fast and thorough cleanup of contaminated sites in my home State in New Jersey.

The contaminants at Superfund sites have been shown to cause cancer, birth defects, infertility, and other serious health problems.

According to EPA, cleanups through the National Priority List and Superfund Alternatives program have brought human exposure to contaminants under control at over 1,400 sites around the Nation. But the impact of Superfund goes well beyond those funded cleanups thanks to a provision in the law that allows EPA to recover treble damages—or three times the cost of cleanups—when the Agency carries out a cleanup on its own. This provision has encouraged countless other cleanups.

But there are still so many sites nationwide and in New Jersey—which has more sites than in any other State—that will need funding for cleanup in the future.

Unfortunately, funding for these cleanups has dropped dramatically since the Superfund tax expired in 1995, meaning fewer cleanups are started and even fewer are finished. Too many communities are waiting too long for cleanups. The threat that EPA will come in and clean up a site, and the threat of treble damages, is now all but extinguished by the lack of funds. And the cleanups that are being done, it seems, are not as robust as they once were—in many cases, remedies are selected based on available funds rather than risk.

I have personally visited many of these sites, and have seen firsthand the impact a contaminated site can have on a community. Nothing but a full and timely cleanup can restore these communities.

We must provide the program the resources it desperately needs. For years, I have introduced the Superfund Polluter Pays Act, which would reauthorize the original Superfund fees and make polluters, not taxpayers, pay the costs of cleaning up Superfund sites.

Congress needs to reinstate the “polluter pays” taxes so those industries most responsible for polluting our land and water are held responsible for cleaning up our toxic legacy, a legacy that severely affects New Jersey and many other States around the Nation. This is only fair. Restoring the “polluter pays” principle to this program would reduce pressures on the Federal budget and lead to faster cleanup of these toxic and dangerous sites.

I understand that reinstating this tax is not within this committee’s jurisdiction, and some of my colleagues will look for solutions we can offer as a committee to strengthen Superfund.

One thing we can do within our committee’s jurisdiction is encourage EPA’s efforts to establish financial responsibility requirements for the most polluting industries. Those requirements can stop the proliferation of new orphan Superfund sites which hurt public health and cost the taxpayers millions.

But the main problem facing Superfund is the expiration of the polluter pays tax, and the most important thing we in Congress can do is reinstate it.

Cleaning up toxic Superfund sites not only reduces health risks. It also helps create jobs during the cleanup and allows for redevelopment of the land once the cleanup is completed. We should all support cleanup efforts of these contaminated sites, and should ensure that these efforts are appropriately funded.

Mr. PALLONE. So, I would yield back, unless one of my colleagues—I yield to Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. I thank my ranking member for yielding the time.

I know we don’t have jurisdiction over that fund, but we do have jurisdiction over the EPA. And that is what this hearing is about today. I think every Member of Congress around the country had problems with the slowness in cleaning up. I know I do in our district, in our community, along with other Members, and Members who are here today. So, that is what we are for, and see why we can’t move these cleanups along to make our neighborhoods safe.

And I appreciate your time. Thank you.

Mr. PALLONE. Any other of my colleagues want time? If not, Mr. Chairman, I yield back.

Mr. SHIMKUS. The gentleman yields back his time.

Now, I turn to our colleagues in the first panel. I am going to do it by seniority first. So, I would like to first recognize Congressman Lacy Clay.

Mr. CLAY. I am going to yield.

Mr. SHIMKUS. You can do that, but you are senior.

Mr. CLAY. I know. We have an arrangement.

Mr. SHIMKUS. And I was messing it up. I was going to use another word but—

Mr. CLAY. That is fine.

Mr. SHIMKUS. So, the Chair now recognizes the gentlelady, or the gentlewoman, from the Metropolitan St. Louis area, Congresswoman Wagner, for 5 minutes.

# **STATEMENTS OF HON. ANN WAGNER AND HON. WM. LACY CLAY, REPRESENTATIVES IN CONGRESS FROM THE STATE OF MISSOURI**

## **STATEMENT OF HON. ANN WAGNER**

Mrs. WAGNER. Thank you. Thank you, Mr. Chairman. I thank my friend and colleague Lacy Clay for yielding.

Chairman Shimkus, Ranking Member Tonko, full committee ranking member, Mr. Pallone, and my other colleagues, I appreciate the opportunity to speak to you today on this very important

subject over oversight on CERCLA and the EPA's role in cleaning up contaminated sites across the country.

I would like to speak today about my experience with the West Lake Landfill in St. Louis and how the EPA has failed, failed for more than 30 years, in its cleanup of nuclear waste dating back to the Manhattan Project and World War II. For 3 full decades, the CERCLA process, and particularly the EPA, have failed the people of St. Louis in the most heartless manner possible.

Before I share the facts, I want to paint a bleak picture of what my constituents are facing. Moms and dads are watching their children suffer from and fight uncommon health afflictions. Local school districts are sending kids home with notices of emergency procedures related to the hazardous landfill. The county health department started testing nearby residents for respiratory problems and developed an emergency plan of its own.

I cannot possibly imagine what it would be like to open my child's book bag when they got home from school and learned that they are subject to extreme health risk or learn about the procedures they have been practicing in their classrooms in the event that the radioactive waste reaches fire. This is happening and it is happening to the innocent children every day in St. Louis. These are the experiences caused by years, years of dereliction and inaction by the EPA.

In 1990, the EPA listed West Lake on the National Priorities List under CERCLA. It wasn't until 18 years later, in 2008, that the EPA was finally able to come up with a decision on what to do with the waste at the site.

After intense public backlash and sharp criticism from the EPA's own National Remedy Review Board, the agency reopened the 2008 decision and has undertaken additional testing and study.

In June of this year, just last month, another document prepared by the National Remedy Review Board in 2013 was released by the EPA stating—

Mr. SHIMKUS. Would the gentlelady yield? I am sorry to do that but we have got young kids coming in which we want to incentivize. Come on in. There are seats, if people can move. This is about their future. I love it when we have young adults come in. And they were kicking some out and I didn't want to do that.

Mrs. WAGNER. Gather around the walls.

Mr. SHIMKUS. That is right.

Mrs. WAGNER. I do want to reclaim my time, however, Mr. Chairman.

Mr. SHIMKUS. Well, that was another reason why I was interrupting, but you caught me.

And we are going to be very gracious on time. So, the gentlelady, you can resume. Thank you for letting me interrupt.

Mrs. WAGNER. Thank you, Mr. Chairman. And welcome. Welcome, young people. It is about your future and the future of all of our families and our children in our communities.

After intense public backlash and sharp criticism from the EAP's National Remedy Review Board, the agency reopened, as I stated, a 2008 decision and has undertaken additional testing and study.

In June of this year, another document prepared by the National Remedy Review Board in 2013 was released by the EPA stating

that removing radioactive waste at the landfill was feasible and could reduce long-term risks, contradicting the EPA's earlier decision to leave the waste in place and capping.

But simply, Mr. Chairman, the fact that this 2013 document has not been available before last month shows the lack of transparency and accountability that the EPA has demonstrated throughout this entire process.

As the Missouri Attorney General stated, and I quote, "the EPA has time and again made promises that failed to deliver results." Meanwhile, families suffer as the clock ticks, and ticks, and ticks away.

During this additional testing, discovery of new radioactive materials is consistently found outside of the known containment area, bringing considerable doubt in EPA's management of the site while pushing back the time line for action.

At the same time, a subsurface fire is burning in an adjacent site and moving toward the radioactive waste, prompting significant and absolutely justifiable concern in the community that the EPA has turned a blind eye and failed in its missions to protect our residents. And despite the seriousness of the situation, the EPA has still, still not made a decision about what do with the waste, pushing back their self-imposed deadline for releasing a decision time after time and year after year.

Failure after failure while entire communities wait. Forget clean-up and remediation; the EPA can't even make a decision about what to do with the Federal Government's nuclear waste. They have been unable to deliver on deadlines to ensure basic safety in preventing the underground fire from reaching the radioactive waste.

In a letter from the International Association of Firefighters, they say, and I quote, Firefighters in the area are especially concerned about the dangers posed by the underground smoldering fire at the nearby Bridgetown landfill. The proximity of the two landfills creates the potential for firefighters and other emergency personnel to be exposed to radioactive materials during response operations.

Community leaders, Mr. Chairman, such as Dawn Chapman and Karen Nickel who have joined me and are seated right behind me, and Ed Smith who couldn't be with us today have been tirelessly raising the alarm for years about the dangers posed by this site. I have their testimony, Mr. Chairman, that I would like to submit for the record.

Mr. SHIMKUS. We will look at the testimony, but we won't commit for submission to the record, but we will have to talk to the ranking member.

Mrs. WAGNER. Let me take a quote from Karen Nickel. They both are up here of their own expense, their own dime, their own nickel because they care so deeply about their communities and their families.

Karen Nickel says, where we thought we would find an ally in EPA, instead we found a foe and failure. Dawn Chapman, we deserve to be able to put our children on the school bus without fear that a catastrophic event will happen at this land fill and our children will have to be sent to a different location to keep them safe.

Mr. Chairman, I can tell you that this is the first issue I was briefed on after being elected to Congress nearly 4 years ago, and it is past time, past time for action. I appreciate their support and am asking this committee for help on behalf of all my constituents and these leaders, these women and men, and activists who have recognized that something must be done to clean up this nuclear waste and prevent health and safety concerns.

That is why I, along with my colleague, Congressman Lacy Clay and Congressman Blaine Luetkemeyer introduced legislation to transfer control of landfill from the EPA to the Army Corps of Engineers Formerly Utilized Sites Remedial Action Program, FUSRAP, which is H.R. 4100.

Companion legislation in the Senate has already been passed by unanimous consent. The Corps has successfully and professionally managed several of the similar sites in the St. Louis area and across the country. This move is supported by the St. Louis community, including SSM Healthcare, which describes itself as, and I quote again, the healthcare provider serving the community surrounding the West Lake Landfill.

Mr. Chairman, members of this committee, the EPA has had more than 25 years to understand and resolve the situation at this landfill and they have delivered zero, zero results. The Agency has undoubtedly lost the trust of the entire community and has lost my trust as well. It is time for someone new to step in. EPA has failed and CERCLA has failed. And as my constituents and I continue our fight, the clock continues to run.

I would also like to request, Mr. Chairman, to insert into the record local letters of support for H.R. 4100, as well as city and council resolutions supporting the transfer of West Lake from EPA to the Army Corps. And these documents that I have referenced today all I would like to submit for the record, sir.

Mr. SHIMKUS. Again, we will take that into consideration with the minority.

Mrs. WAGNER. Thank you very much. Finally, most importantly I would like to enter into the record the full testimony of the constituents who were not able to testify on their own today at this hearing. I thank you very much for your indulgence, Mr. Chairman.

[The prepared statement of Mrs. Wagner follows:]

Thank you all for inviting me to speak on this very important subject on oversight of CERCLA and the EPA's role in cleaning up contaminated sites around the country. I'd like to speak today about my experience with the Westlake landfill in St. Louis and how the EPA has failed for more than 30 years in its cleanup of nuclear waste dating back to the Manhattan Project and World War II. For three decades, the CERCLA process, and particularly the EPA, have failed the people of St. Louis in the most heartless manner possible.

Before I share the facts, I want to paint a bleak picture of what my constituents are facing. Moms and dads are watching their children suffer from and fight uncommon health afflictions. Local school districts are sending kids home with notices of emergency procedures related to the hazardous landfill. The county health department started testing nearby residents for respiratory problems and developed an emergency plan of its own.

I cannot possibly imagine what it would be like to open my child's book bag when they get home from school and learn that they are subject to extreme health risks. Or learn about the procedures they have been practicing in their classrooms in the event the radioactive waste meets fire. This is happening, and it is happening to innocent children every day in St. Louis. These are the experiences caused by years of EPA dereliction and inaction.

In 1990, the EPA listed Westlake on the National Priorities List under CERCLA. It wasn't until 18 years later in 2008 that the EPA was finally able to come up with a decision on what to do with the waste at the site. After intense public backlash and sharp criticism from the EPA's National Remedy Review Board, the Agency reopened the 2008 decision and has undertaken additional testing and study. In June of this year, another document prepared by the National Remedy Review Board in 2013 was released by the EPA stating that removing radioactive waste at the landfill was feasible and could reduce long-term risks, contradicting the EPA's earlier decision to leave the waste in place and capping it. The fact that this document has not been available before last month shows the lack of transparency and accountability that the EPA has demonstrated throughout this entire process. As the Missouri Attorney General stated, "the EPA has time and again made promises but failed to deliver results."

Meanwhile, families suffer as the clock ticks, ticks, ticks away.

During this additional testing, discovery of new radioactive material is consistently found outside of the known containment area, bringing considerable doubt in EPA's management of the site while pushing back the timeline for action.

At the same time, a subsurface fire is burning in an adjacent site and moving toward the radioactive waste, prompting significant, and absolutely justifiable, concern in the community that the EPA has turned a blind eye and failed in its mission to protect residents.

And despite the seriousness of the situation, the EPA has still not made a decision about what to do with the waste, pushing back their self-imposed deadline for releasing a decision time after time, year after year.

Failure after failure while entire communities wait. Forget cleanup and remediation. The EPA can't even make a decision about what to do with the federal government's nuclear waste. They have been unable to deliver on deadlines to ensure basic safety in preventing the underground fire from reaching the radioactive waste. In a letter from the International Association of Firefighters, they say, "Fire fighters in the area are especially concerned about the dangers posed by the underground smoldering fire at the nearby Bridgetown landfill. The proximity of the two landfills creates the potential for fire fighters and other emergency personnel to be exposed to radioactive materials during response operations."

Community leaders such as Dawn Chapman, Karen Nickel and Ed Smith have been tirelessly raising the alarm for years about the dangers posed by this site. I can tell you, this is the **first** issue I was briefed on after being elected to Congress nearly 4 years ago and it is past time for action. I appreciate their support and am asking this committee for help, on behalf all of my constituents and these leaders who recognize that something must be done to cleanup this nuclear waste and prevent health and safety concerns.

That's why I, along with Congressman Lacy Clay and Congressman Blaine Luetkemeyer, introduced legislation to transfer control of the landfill from the EPA to the Army Corps of Engineer's Formerly Utilized Sites Remedial Action Program (FUSRAP) – H.R. 4100. Companion legislation in the Senate has already been passed by unanimous consent. The Corps has successfully and professionally managed several other similar sites in the St. Louis area and across the country. This move is supported by the St. Louis community, including SSM Healthcare, which describes itself as "the health care provider serving the community surrounding the West Lake Landfill."

The EPA has had more than 25 years to understand and resolve the situation at this landfill, and they have delivered zero results. The Agency has undoubtedly lost the trust of the entire community, and my trust as well. It is time for someone new to step in. EPA has failed, and CERCLA has failed. And as my constituents and I continue our fight, the clock continues to run.



Mr. SHIMKUS. Again, the same statement applies.

The Chair now recognizes the gentleman from St. Louis, Mr. Clay, for 5 minutes.

#### **STATEMENT OF HON. WM. LACY CLAY**

Mr. CLAY. Thank you, Mr. Chairman and Ranking Member Tonko, as well as all of the members of this committee for affording Congresswoman Wagner and I the opportunity to come to you today and tell our story.

You know FUSRAP, which is already hard at work across the Nation and at several locations in the St. Louis area cleaning up our Nation's legacy of radioactive and toxic contamination from weapons production. The bill before you, H.R. 4100, was crafted with strong grassroots support from the Missouri Coalition for the Environment, Just Moms St. Louis, who were mentioned earlier, who are here with us today, and many other civic and environmental activists to address a 74-year-old nuclear legacy in St. Louis, which has subjected families to fear and suffering for far too long.

In 1942, the War Department secretly contracted with the Mallinckrodt Chemical in St. Louis to enrich yellow cake uranium from the Belgian Congo to fuel the Manhattan Project. That enriched uranium prepared with the assistance of Nobel Prize winning physicist, Dr. Arthur Holly Compton of Washington University, was used to fuel our Nation's first atomic bombs created at Los Alamos, New Mexico, under the direction of Manhattan Project Director, J. Robert Oppenheimer. That program, which exists from 1942 to 1945 was essential to winning World War II but the nuclear waste that was generated from the manufacturing of those original atomic bombs and others that would follow forged a curse of radioactive contamination that is still inflicting pain and suffering on our constituents today.

After World War II, that waste and several failed attempts to clean it up caused dangerous radioactive contamination at sites in downtown St. Louis, at Lambert-St. Louis International Airport, at Latty Avenue in North St. Louis County, at Coldwater Creek, which is a tributary which flows into the Mississippi River.

And finally, in 1973, approximately 50,000 tons of contaminated soil from that same nuclear waste was illegally dumped at West Lake Landfill in Bridgeton, Missouri, and mixed with other debris. That nuclear waste includes radioactive uranium, radioactive thorium, radioactive barium sulfate, and other toxic contaminants. Unbelievably, that radioactive toxic mess dumped illegally at West Lake 43 years ago is held in an unlined limestone landfill near the Missouri River, near a major hospital, near Lambert-St. Louis Airport, near schools, and interstate highways. And most troubling of all, is the appalling fact that 1,000 of our constituents live less than a mile away from this illegal nuclear waste dump.

The truth is that if you search far and wide across this country, it would be almost impossible to find a dumber, more dangerous, more completely irresponsible place to dump nuclear waste than West Lake Landfill.

And if you think this potential environmental disaster couldn't get any worse, you are wrong. For the last 4 years, we have also

been dealing with a creeping underground landfill fire at the adjacent Bridgeton Sanitary Landfill, which is under the control of the Missouri Department of Natural Resources. And that underground fire is less than 1,000 feet from the buried nuclear waste.

My friends, the U.S. Government created this radioactive mess and then we allowed it to metastasize to other sites, including West Lake and we have a clear and unavoidable responsibility to finally clean it up. That is what H.R. 4100 is all about. Our legislation builds on the highly successful track record of FUSRAP, which is already cleaning up the same nuclear waste at other sites around St. Louis. It is fiscally responsible because even after the transfer of the West Lake to the Army Corps of Engineers, the site would remain on the Superfund List, which would preserve revenue streams to help fund the cleanup from several potentially responsible parties, including the Department of Energy, Republic Services, and the Cotter Corporation.

This bill has earned the bipartisan support of Democrats and Republicans, religious coalitions, community activists, and respected scientific sources, who believe that a cleanup like this should be put in the hands of those who have the strongest possible expertise in cleaning up nuclear waste, the U.S. Army Corps of Engineers.

You know a few months ago, this identical legislation introduced by our Missouri colleagues Senators Blunt and McCaskill was embraced and approved by a huge bipartisan majority in the U.S. Senate. Congresswoman Wagner and I introduced the companion bill here. Some of the forces who want to keep this nuclear waste in the unlined West Lake Landfill ganged up to stop it. And I am greatly disappointed that this commonsense bill has been delayed, obstructed, and even deliberately misrepresented by some staff and certain members of this committee.

My friends, after 74 years of negligence by the U.S. Government, that is totally indefensible.

Now, I recognize that there are factions who oppose this bill because of cost concerns. I also know that some oppose this timely and wise solution to cleaning up West Lake for purely selfish and political considerations but none of that matters to the real people who we represent who still live in fear because of the West Lake Landfill.

So, let me say this to all of you. As my colleagues and my friends in service to this country when the U.S. Government makes a mistake, when we put citizens at risk, when we disrupt their lives, when destroy the peace and property values in these neighborhoods and when we allow the health of innocent citizens to be harmed because of our own inaction, we must make it right.

The U.S. Government created this nuclear mess in West Lake, and we have a responsibility to pass this bill and clean it up. And I ask you all to search your conscience and realize that these people are suffering, that our community is in harm's way and need to clean it up and give that bill serious consideration.

And I yield back the balance of my time.

[The prepared statement of Mr. Clay follows:]

TESTIMONY OF  
CONGRESSMAN WM. LACY CLAY (D) MISSOURI  
HOUSE COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON THE ENVIRONMENT AND THE ECONOMY  
WEDNESDAY, JULY 13, 2016  
WASHINGTON, DC

**Mr. Chairman, Ranking Member Tonko, and  
Ranking Member of the Full Committee Mr.  
Pallone, honorable members of this  
subcommittee,**

**I want to thank you for the special invitation  
that you have extended to Congresswoman  
Wagner and myself to appear before you this  
morning in support of our critical, bipartisan  
legislation to advance the long-delayed clean-  
up of West Lake Landfill in Bridgeton,  
Missouri.**

**Our legislation, HR 4100, which is identical to the Senate version which has already passed with overwhelming bipartisan support, would transfer primary responsibility for the cleanup of West Lake Landfill from the Environmental Protection Agency to the U.S. Army Corp of Engineers Formally Utilized Sites Remedial Action Program...(FUSRAP) which is already hard at work across the nation and at several locations in the St. Louis area...cleaning up our nation's legacy of radioactive and toxic contamination from weapons production.**

**The bill before you was crafted with strong grass roots support from the Missouri Coalition for the Environment, Just Moms St. Louis (whose courageous founders are here today); and many other civic environmental activists to address a 74-year old nuclear**

**legacy in St. Louis which has subjected families to fear and suffering for far too long.**

**===**

**In 1942, the War Department secretly contracted with Mallinckrodt Chemical in St. Louis to enrich yellow cake uranium from the Belgian Congo to fuel the Manhattan Project.**

**That enriched uranium, prepared with the assistance of Nobel Prize winning physicist, Dr. Arthur Holly Compton, of Washington University...was used to fuel our nation's first atomic bombs created at Los Alamos, New Mexico...under the director of the Manhattan Project, J. Robert Oppenheimer.**

**That program, which existed from 1942 - 1945, was essential to winning World War II.**

**But the nuclear waste that was generated from the manufacturing of those original atomic bombs and others that would follow, forged a curse of radioactive contamination that is still inflicting pain and suffering on my constituents today.**

**After World War II, that waste and several failed attempts to clean it up...caused dangerous, radioactive contamination at sites in Downtown St. Louis, at Lambert St. Louis Airport, at Latty Avenue in North St. Louis County, at Cold Water Creek...which is a tributary that flows into the Mississippi River, ...and finally, in 1973....approximately 50,000 tons of that same nuclear waste was illegally dumped at West Lake Landfill in Bridgeton, Missouri and mixed with other debris.**

**That nuclear waste includes:**

**Radioactive uranium.**

**Radioactive thorium.**

**Radioactive barium sulfate.**

**And other toxic contaminants.**

**Unbelievably, that radioactive, toxic mess...  
dumped illegally at West Lake 43-years ago, is  
held in an unlined, limestone landfill...**

**Near the Missouri River,**

**Near a major hospital,**

**Near Lambert St. Louis International Airport,**

**Near schools and interstate highways...**

**And, most troubling of all...**

**Is the appalling fact that 1,000 of my  
constituents live less than a mile away from  
this illegal nuclear waste dump.**

**The truth is that if you searched far and wide across this country...**

**It would be almost impossible to find a dumber, more dangerous, more completely irresponsible place to dump nuclear waste... than West Lake Landfill.**

**===**

**And if you think this potential environmental disaster couldn't get any worse...you're wrong.**

---

**For the last four years...we have also been dealing with a creeping, underground landfill fire at the adjacent Bridgeton Sanitary landfill...which is under the control of the Missouri Department of Natural Resources.**

**And that underground fire is less than 1000 feet away from the buried nuclear waste.**

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**My friends, the United States government created this radioactive mess.**

**And then, we allowed it to metastasize to other sites including West Lake...**

**And we have a clear and unavoidable responsibility to finally clean it up.**

**That is what HR 4100 is all about.**

**Our legislation builds on the highly successful track record of FUSRAP which is already cleaning up the same nuclear waste at other locations across the St. Louis area.**

**It is fiscally responsible, because even after the transfer of West Lake to the Army Corps of Engineers...the site would remain on the Superfund list, which would preserve revenue streams to help fund the cleanup from several potentially responsible parties...including the**

**Department of Energy, Republic Services and the Cotter Corporation.**

**This bill has earned the bipartisan support of Democrats and Republicans, religious coalitions, community activists, and respected scientific sources who believe that a cleanup like this should be put in the hands of those who have the strongest possible expertise in cleaning up nuclear waste...the U.S. Army Corps of Engineers.**

---

**A few months ago, this identical legislation, introduced by my Missouri colleagues, Senators Blunt and McCaskill, was embraced and approved by a huge bipartisan majority in the U.S. Senate.**

**Congresswoman Wagner and I introduced HR 4100 as a companion bill on the House side, and almost immediately...**

**Some of the forces who want to keep this nuclear waste in the unlined West Lake Landfill, ganged up to stop it.**

**And I am greatly disappointed that this common sense bill has been delayed, obstructed, and even deliberately misrepresented by some staff and certain members of this committee...**

**My friends, after 74-years of negligence by the United State government, that is totally indefensible.**

---

**Now I recognize that there are factions who oppose this bill because of cost concerns.**

**I also know that some oppose this timely and wise solution to cleaning up West Lake for purely selfish and political considerations.**

**But none of that matters to the real people  
whom I represent who still live in fear because  
of West Lake landfill.**

**===**

**So let me say this to all of you...**

**As my colleagues, and as my honorable friends  
in service to this country...**

**When the United States government makes a  
mistake;**

**When we put citizens at risk;**

**When we disrupt their lives;**

**When we destroy the peace and property  
values in their neighborhoods;**

**And when we allow the health of innocent  
citizens to be harmed because of our own  
inaction...**

**We must make this right.**

**===**

**I was the first Member of Congress to call for the complete removal of all nuclear waste from West Lake landfill...and I will continue to demand that.**

**The United States government created this nuclear mess at West Lake...and we have a responsibility to pass this bill and clean it up.**

**I ask you all to search your consciences...and to think about my constituents who live in fear, think about those who are already sick, think about this 74-year old federal problem...and remember that we have the power to fix this.**

**74-years is too long to wait...let's pass HR 4100. Thank you.**

Mr. SHIMKUS. The gentleman yields back his time. We thank you for your testimony, both of you. We will submit for the record a statement by the Corps of Engineers in response, since they were raised in your testimony and that will be submitted for the record agreed upon by both the minority and the majority.

[The information appears at the conclusion of the hearing.]

Mr. SHIMKUS. And we appreciate your testimony, and now we will turn to the EPA for the second panel. Thank you very much.

So, we will start with our first panel, and we welcome back Mathy Stanislaus, which is actually a new name. As far as his office, he is the Assistant Administrator for the Office of Land and Emergency Management from the United States Environmental Protection Agency. Mathy, you have been a friend of the committee and been here numerous times. Thank you for appearing, and we will recognize you for 5 minutes.

**STATEMENT OF MATHY STANISLAUS, ASSISTANT ADMINISTRATOR, OFFICE OF LAND AND EMERGENCY MANAGEMENT, ENVIRONMENTAL PROTECTION AGENCY**

Mr. STANISLAUS. Good morning, Chairman Shimkus, Ranking Member Tonko, and other members of the committee. I am the Assistant Administrator at the U.S. EPA with Office of Land Emergency Management, which is responsible for, among other things, the Superfund Program.

The Superfund Program protects tens of millions of Americans in thousands of communities across the country by first responding to the imminent issues of a release, something that is called time-critical and non-time-critical removal actions to protect human health and the environment for shorter term response actions. These really effectively serve a safety net to protect communities from the immediate issues of hazardous substances. And these are all done at the request of States, local governments, and community residents.

Over the past 4 years, for example, EPA has conducted or provided oversight for close to 1400 of what we call removal completion. These are the situations of imminent risk to public health and a total of close to 800 emergency responses. You know some of these include securing and disposing of thousands of containers of acids, solvents, and flammable materials in a rural area outside of Dexter, Oregon; providing air and water monitoring at train derailment outside Galena, Illinois, spilling more than 300,000 gallons of crude oil; removing close to 4,000 cubic yards of asbestos and PCB waste from burned out former school buildings in Tazlina, Alaska, and managing the collection and disposal of thousands of hazardous and nonhazardous waste items, including drums, tanks, appliance in the aftermath of the Merrimack River flooding in St. Louis, Missouri.

Separately, the Superfund Remedial Program addresses longer term at more comprehensive and more complex sites. The EPA's analysis, as was noted earlier, shows that approximately 53 million people live within 3 miles of a Superfund NPL site or a Superfund Alternative Approach site, roughly 17 percent of the U.S. population, including 18 percent of all children in the U.S. under the age of 5. This population is predominately minority and low-income and is less likely to have a high school education than the U.S.

population as a whole. As a result, these communities often lack sufficient resources to address health and environmental concerns.

Sites that the EPA adds to the National Priorities List represent the Nation's most serious uncontrolled and abandoned hazardous waste sites. Contaminated sites reflect both legacy practices but also recent practices of mismanagement. Of the 112 sites listed on the NPL from 2010 to 2016, nearly half have related from recent mismanagement of industrial activities. Of the 112 sites, 12 involve bankrupt facilities or properties. None of these situations did those companies have financial instruments in place to pay for the clean-up. Therefore, these sites will have to be cleaned up by taxpayer resources in the future.

State partnerships is critical to Superfund cleanup efforts. EPA has ongoing engagement with the States in the execution and implementation of the Superfund Program, as well as tribes and local communities. The EPA requests State or tribal support for any site that it seeks to list on the National Priorities List sites, coordinates early site assessments. In some cases, the States actually take the lead of investigation, along with funding to the States to conduct that funding. And development of the cleanup remedies is also done with extensive consultation with the State.

We also recognize that that engagement, that engagement could be strengthened and we currently have a process to do that, particularly how we want to make sure that State standards are properly included in our decisionmaking. We have stood up a working group working with the States, working with ASTSWMO and the ASTSWMO will be talking about that a bit later.

Community engagement is a real critical component of our program. We want to engage and ensure that communities participate in an effective way, in an informed way. We invest in technical assistance so technical assistance providers on behalf of communities can digest some fairly complex technical information.

We seek to present the information in an understandable way so communities can really understand the decisions in front of us.

And EPA is also continuing to utilize every dollar to the greatest extent possible. You know obviously, we want to make responsible parties pay for that and we have leveraged significant federally enforcement dollars in 2015. EPA has secured commitments on the order of \$2 billion from responsible parties to conduct the cleanup. It still leaves a gap, where the taxpayers have to pay for the orphaned sites, where there is no responsible party or responsible parties don't have financial resource to pay for that.

You know EPA does have a challenge in the Superfund Program. We do have a backlog of sites that we cannot fund because of the absence of funding. This is the reason that the President requested a bump-up for Superfund resources of \$20 million in the fiscal year 2017 budget. And the administration has also supported the reinstatement of the Superfund tax so that there is a dedicated tax to pay for the cleanup, as opposed to the taxpayer paying for that.

To underscore the value of the investment in the Superfund Program, it returns an investment in health, disease avoided, and the increase of property value, and tax revenue from the reuse of these properties. We believe it is an investment, not only dealing with the legacy of sites but also recent sites, ongoing sites that result

in mismanagement that, unfortunately, the Federal Government Superfund Program has to address.

With that, I see my time is up. I will close and take questions from you.

[The prepared statement of Mr. Stanislaus follows:]



**TESTIMONY OF MATHY STANISLAUS  
ASSISTANT ADMINISTRATOR  
OFFICE OF LAND AND EMERGENCY MANAGEMENT  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE  
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY  
COMMITTEE ON ENERGY AND COMMERCE  
UNITED STATES HOUSE OF REPRESENTATIVES**

**July 13, 2016**

Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee, I am Mathy Stanislaus, Assistant Administrator for EPA's Office of Land and Emergency Management. Thank you for the opportunity to appear today to discuss EPA's Superfund program's accomplishments and challenges.

**THE SUPERFUND PROGRAM**

The Superfund program uses a variety of tools to help protect human health and the environment. These tools include shorter-term removal actions to mitigate immediate threats to human health and the environment, and remedial actions, which address more complex and longer-term cleanup of hazardous waste sites.

State partnership is critical to Superfund cleanup efforts. The EPA responds to requests from states, tribes and communities to propose to add a site to the National Priorities List (or NPL). The NPL is EPA's list of priority sites with known or threatened releases of hazardous substances, pollutants or contaminants. Only NPL sites are eligible for remediation financed by the Superfund Trust Fund. The EPA requests state support to list sites on the NPL and coordinates with them to conduct early site assessments. In some cases, states may lead the

remedial action work with EPA oversight. The EPA uses congressionally appropriated resources to fund states through cooperative agreements to participate meaningfully in the Superfund process. For example, states are often funded to conduct site assessment work.

***Removal/Emergency Response***

Each year, approximately 30,000 emergencies involving the release or threatened release of oil and hazardous substances are reported in the United States. These emergencies range from small-scale spills to large events requiring prompt action and evacuation of nearby populations. The EPA coordinates and implements a wide range of activities to ensure that adequate and timely response measures are taken in communities affected by hazardous substances and oil releases, where state and local first responder capabilities have been exceeded, or where additional support is needed.

The EPA conducts time-critical and non-time-critical removal actions when necessary to protect human health and the environment by funding response actions directly or overseeing and enforcing actions conducted by potentially responsible parties (PRPs). Through shorter-term actions, the Superfund program controls exposure to hazardous substances so that human health is protected while long-term cleanup is underway. For example, where the EPA determines that existing water supplies are unsafe due to releases from contaminated sites, we provide alternative sources of drinking water. The EPA has provided more than 2.1 million people near or on Superfund NPL sites with alternative sources of drinking water.

In FY 2015, EPA's Superfund Removal and Emergency Response programs conducted or provided oversight for 278 emergency response and removal actions. To date, more than 11,000 emergency response and removal actions have been completed at both NPL sites and non-NPL sites to protect communities and reduce the immediate threat to human health and the environment.

### ***Remedial Program***

The Superfund Remedial program continues to address complex, high-priority, longer-term cleanups. These cleanups have positive impacts on the lives of millions of Americans in thousands of communities across the country. EPA analysis of the latest census data found that approximately 53 million people live within 3 miles of a Superfund NPL site or a Superfund alternative approach site; roughly 17 percent of the U.S. population, including 18 percent of all children in the U.S. under the age of five. This population is predominately minority and low income, and is less likely to have a high school education than the U.S. population as a whole. As a result, these communities often lack sufficient resources to address health and environmental concerns.

Sites that the EPA adds to the NPL represent the nation's most serious uncontrolled or abandoned hazardous waste sites. Contaminated sites reflect both legacy practices and more recent activity. The sites on the NPL vary in size, complexity and contamination. Sites on the NPL commonly include manufacturing facilities, landfills, processing facilities and mining sites. The EPA analysis of NPL site listings from FY 2010 to FY 2016 (112 sites) indicate that nearly 50 percent of those sites are related to manufacturing activities which include metal fabrication,

lumber and wood product preservation/treatment and metals and mineral processing. Through FY 2015, the EPA and its state and tribal partners completed final assessments at more than 42,000 contaminated sites. In addition, through FY 2015, the EPA has added 1,714 sites to the NPL.

At 68 percent (1,177) of the more than 1,700 NPL sites, construction of the cleanup remedy has been completed. All response actions have been completed at 391 sites (approximately 22 percent of the sites on the NPL), resulting in deletion from the NPL. The Superfund program continues its focus on controlling potential human exposure at NPL sites. In FY 2015, human exposure was brought under control at an additional 10 sites resulting in a cumulative total of 1,439 NPL sites where human exposure is under control. And groundwater migration was brought under control at an additional 15 sites resulting in a cumulative total of 1,138 NPL sites where contaminated groundwater migration is under control.

Superfund cleanups reduce adverse human health impacts, including those affecting infants. A National Bureau of Economic Research study entitled “Superfund Cleanups and Infant Health,” shows that Superfund cleanups reduce congenital abnormalities in infants by as much as 25 percent for those living within 5,000 meters of a site.<sup>1</sup> Additionally, cleanups involving lead-contaminated soil have contributed to documented reductions in blood-lead levels in children. If left unaddressed, elevated blood-lead levels may result in irreversible neurological deficits, such as lowered intelligence and attention-related behavioral problems.

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<sup>1</sup> Currie, Janet, Michael Greenstone, and Enrico Moretti. 2012. “Superfund Cleanups and Infant Health”. *American Economic Review*, 101(3): 435-441

Cleanups also have significant economic benefits. A study by researchers at Duke University and the University of Pittsburgh analyzed census tract data and found that deletion of sites from the NPL after cleanup raises the value of owner-occupied housing within three miles of the site by 18.6 - 24.5 percent.<sup>2</sup> Property values also increased at the site listing and construction completion program milestones. Cleanups increase tax revenue for local communities and state governments, and help create jobs during and after cleanup. At more than 850 Superfund sites, EPA's engagement has enabled productive reuse. The EPA has data for 454 of these sites. At these 454 sites, 2015 data show approximately 3,900 businesses generating \$29 billion in sales. These businesses employed more than 108,000 people who earned a combined income of \$7.8 billion.<sup>3</sup>

The Universal Oil Products Chemical Division Superfund site located in East Rutherford, New Jersey is an example of how cleanup can lead to beneficial use of a Superfund site. Once home to a chemical and solvent recovery facility, the site now supports several shopping areas and a rail line extension. The rail extension, known as the Sports Line, connects the commuter rail line on site with nearby MetLife Stadium, home of the New York Giants and New York Jets, and the site of the 2014 Super Bowl. Public transportation ridership on the Sports Line saves about 170,000 vehicle miles traveled for each football game. Businesses on site support about 254 jobs and contribute more than \$8 million in annual employment income to the local community.

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<sup>2</sup> Gamper-Rabindran, Shanti and Christopher Timmons. 2013. "Does cleanup of hazardous waste sites raise housing values? Evidence of spatially localized benefits," *Journal of Environmental Economics and Management* 65(3): 345-360

<sup>3</sup> For more information on Redevelopment Economics and in depth case studies please use the link below.  
<https://www.epa.gov/superfund-redevelopment-initiative/redevelopment-economics>

There are many other examples of Superfund sites being returned to beneficial uses. The Plainwell Paper Mill is part of the regional Allied Paper Inc./Portage Creek/Kalamazoo River Superfund site in southwestern Michigan. Wastewater from paper mill operations, including operations at the 36-acre Plainwell Paper Mill property, resulted in the contamination of area soil and river sediments. By turning the mill property into a productive asset once again, the City of Plainwell hoped to revitalize the city's downtown, support local jobs and economic development, and increase property values and tax revenues. The city kicked off the project with a community-based reuse planning process that EPA sponsored. The City of Plainwell has created new interest in the city's downtown, supported local jobs and economic development, and increased area property values and tax revenues. Today, a private business and the City of Plainwell Public Safety Department employ 121 people on the site and contribute an estimated \$6.3 million in annual employment income to the local community.

The NL Industries/Taracorp Lead Smelter Superfund site in Granite City, Illinois was a battery reclamation facility and secondary lead smelter. Lead contamination from the site moved throughout 100 square blocks in three cities and affected about 1,600 residences, including areas where contaminated battery chips were used to fill in low-lying areas. The EPA funded the cleanup of more than 700 properties. The site's potentially responsible parties cleaned up an additional 800 residences and dozens of driveways, alleys and parking lots. Today, seven businesses continue to occupy the main industrial portion of the site, employing 96 people and accounting for more than \$17 million in sales revenues. An intermodal transportation terminal occupies a portion of the area affected by the site in Venice, Illinois.

The EPA also supports the cleanup and beneficial use of federal facility sites through its Superfund program oversight role. The Curtis Bay Coast Guard Yard in Baltimore, Maryland achieved the Construction Completion milestone in 2013. The EPA partnered with the Coast Guard and the State of Maryland to conduct an 11-year cleanup project which included excavating thousands of tons of contaminated soil and sediment while making use of innovative green practices. The cleanup contributes to the Chesapeake Bay restoration efforts and incorporates many sustainable manufacturing practices including creation of its own electricity from landfill gas at an on-site co-generation plant.

Throughout Superfund cleanup efforts, there is a commitment to involve communities and follow through on making a visible difference in communities. Transparency, access and public involvement are essential to meaningful and deliberate decision-making. The EPA helps communities effectively participate in EPA decision-making by providing technical assistance through our Technical Assistance Grants and Technical Assistance Services for Communities contract. Bringing together diverse groups of community members through forums such as the Community Advisory Group better informs our decisions and actions to protect Americans where they live, work, play, and learn.

We are paying particular attention to how the agency can improve its technical assistance processes. We recognize there are organizations outside of the EPA that provide independent technical assistance, and we are looking to expand opportunities for cooperation between the

EPA and colleges, universities, and nonprofits with the shared goal of assessing and addressing the unmet technical assistance needs of impacted communities.

As the Superfund program has evolved, the agency has looked for additional ways to assess remedial program progress and keep the public informed. To better measure long-term progress, the program adopted a Sitewide Ready for Anticipated Use measure. This measure tracks the number of NPL sites where construction is complete and all engineering and institutional controls are in place to ensure the remedy is protective for reasonably anticipated uses over the long-term. Those anticipated uses and needed controls are outlined in the site Record of Decision. Through FY 2015, the EPA determined 752 sites to be Sitewide Ready for Anticipated Use.

#### ***Leveraging Funds***

The EPA is continuing its efforts to efficiently utilize every dollar and resource available to clean up contaminated sites and protect human health. In FY 2015, EPA's Superfund program obligated more than \$443 million in appropriated funds, state cost-share contributions, and potentially responsible party settlement resources, to conduct cleanup construction, and post-construction work at Superfund sites.

The EPA has been very successful in leveraging federal enforcement dollars to secure private party cleanups. In FY 2015, the EPA secured commitments from potentially responsible parties (or PRPs) of approximately \$2 billion to perform cleanups. In addition, PRPs committed to reimburse \$512 million of EPA's past costs from Superfund site cleanup work, the largest cost



recovery amount in Superfund program history. The cumulative value of private party cleanup commitments and cost recovery settlements is more than \$40 billion. The EPA's enforcement efforts have allowed the program to focus EPA's appropriated funds on sites where PRPs cannot be identified or are unable to pay for or perform the cleanup.

Further, a \$5.1 billion settlement addressing fraudulent conveyance claims against Anadarko Petroleum Corporation and Kerr McGee associated with the Tronox bankruptcy resulted in the largest bankruptcy-related award EPA has secured for environmental claims and liabilities. Of the \$5.1 billion, EPA was provided \$1.6 billion to help address specifically identified contaminated sites around the country, with an additional \$400 million provided for a multi-state response trust for cleanup work at EPA-led sites. In addition, approximately \$985 million of the settlement funding was designated to cleanup roughly 50 mine sites on or near the Navajo Reservation in Arizona and New Mexico.

The EPA has also been particularly effective in leveraging its appropriated funding through the use of potentially responsible party settlements to establish site-specific special accounts. Through the end of FY 2015, the EPA has collected approximately \$6.3 billion from potentially responsible parties and earned about \$445 million in interest. Of this amount, the EPA has obligated or disbursed \$3.3 billion for site-specific response actions. The EPA has multi-year plans to spend the \$3.5 billion remaining for site-specific response actions consistent with the settlement agreements negotiated with the PRPs for those sites. By using these funds to conduct response work at contaminated sites with viable PRPs, the EPA can focus appropriated resources on sites where PRPs cannot be identified or are unable to pay for or perform the cleanup.

***Federal Facilities***

For more than 20 years, the EPA's Federal Facilities program has worked collaboratively with other federal departments and agencies to provide oversight specifically for NPL sites located on federally owned property to help ensure that CERCLA is implemented in a protective manner. There are 174 federal NPL sites, which accounts for 10% of all Superfund sites. Due to the size of these sites however, that 10% of total Superfund sites encompasses 42% of the total number of operable units that the Superfund program oversees.

In order to better demonstrate the incremental cleanup construction process that is underway nationally, the Superfund Federal Facilities Response program has begun targeting a percent construction complete measure specifically for federal Superfund NPL sites. This new measure is based on the average of three specific factors: 1) Operable Unit (OU) percent complete; 2) Total cleanup actions percent complete; and 3) Duration of cleanup actions percent complete (national cumulative). As of FY2015, the combined percent complete of federal facilities was 83%. As of FY2015, 372,913 acres of federal NPL land has been returned to beneficial use, which represents 78% of all Superfund site property.

The Federal Facilities office also maintains the Federal Agency Hazardous Waste Compliance Docket (Docket), which acts as an historical record of any federal property that has experienced a hazardous substance, pollutant, or contaminant release or that has been used for treatment, storage, or disposal of hazardous wastes. In the last several years, the Federal Facilities office has completed a review of 514 stalled sites that were on the Docket, and coordinated with its federal partners to identify what assessment work or cleanup work remained to be done at those

facilities. In addition, the office has been working more closely with federal land management agencies to update the Docket and to make sure that all agencies are sharing information about the assessment and cleanup work that is underway at Docket sites.

The Federal Facilities cleanup program has found creative ways to reuse national lands while continuing cleanup on other portions of the properties. In 2015, Congress established a new National Historical Park to highlight the significance of the Manhattan Project, including portions of the Hanford Site in Washington State. At Hanford, a number of historic buildings are included in the new park. Cleanup to support development of the park took 20 years. One of the historic buildings currently serves as a museum documenting the effort to develop a nuclear weapon to help end World War II. Cleanup activities in other areas of the broader Hanford site remain ongoing but this combination of cleanup and historical preservation allows the United States to fulfill its commitment to cleaning up the environment and allow public access to memorialize a significant era in the nation's history.

Since 2010, EPA's Federal Facilities office has had a 34% reduction in appropriated dollars and 27% reduction in FTE. Due to this significant reduction in funds, the Federal Facilities program has developed new approaches for sharing expertise and contract vehicles across the regions to manage the funds as effectively and efficiently as possible but challenges to meeting program responsibilities remain. If funding levels remain at recent appropriations levels, the Federal Facilities office will struggle to keep pace with milestones that have been previously agreed upon with the states and other federal agencies, delaying the restoration and reuse of vital and valuable property and resources.

**SUPERFUND PROGRAM CHALLENGES AND ACTIONS TAKEN**

While the Superfund program continues to make progress cleaning up hazardous waste sites, we still face numerous challenges. One such challenge is the Superfund Remedial Program's appropriated budget, which has declined from the FY 2011 enacted level of \$605 million to \$501 million in FY 2016. The decline in EPA's appropriated resources has resulted in a continued backlog of sites with unfunded new projects that are ready to start construction where other alternatives, such as PRPs conducting the work or special account resources, are not available for those projects. To help address some of the impact on new project starts, the FY 2017 President's budget requested an increase of \$20 million for the Superfund Remedial Program.

There are still sites where the EPA has not identified a viable potentially responsible party, and there are many EPA-performed activities that are not otherwise reimbursed. For this reason, the FY 2017 budget supports reinstatement of the Superfund tax authority. The Superfund tax on petroleum, chemical feedstock and corporate environmental income expired in 1995. Reinstating the Superfund tax authority would provide a stable, dedicated source of revenue for the Superfund Trust Fund and restore the historic nexus whereby parties benefiting from the manufacture and sale of substances found in hazardous waste sites contribute to the cost of cleanup. The reinstated tax authority is estimated to generate a revenue level of approximately \$1.8 billion in 2017 to more than \$2.8 billion annually by 2026. Total tax revenue over the period 2017 to 2026 is predicted to be \$25.4 billion. The revenues would be placed in the Superfund Trust Fund and would be available for appropriation from Congress to support the assessment and cleanup of the nation's highest risk sites within the Superfund program.

In addition to challenges associated with funding new start projects, the Superfund budget for federal facility oversight has been particularly hard hit, with a significant decrease in FY 2014. The enacted budget was 21 percent lower than the FY 2014 president's budget request. The decrease has created a challenge to EPA's NPL oversight activities and may create situations where agency technical approval of NPL site cleanup documents are delayed. A further budget challenge is related to the need to more effectively manage cleanup resources to address the largest and most complex sites that have come to demand an increasing proportion of EPA's Superfund resources.

To address these Superfund program challenges, the EPA is integrating programmatic improvements across all stages of the cleanup process. We are working to integrate and leverage the agency's land cleanup authorities to put previously contaminated sites back into productive use while protecting human health and the environment. The EPA is also improving our cleanup enforcement activities as a means to address the funding challenges that our program faces. By obtaining responsible party participation in conducting and/or financing cleanups, we preserve Superfund monies to address sites where there are no viable responsible parties.

Starting in FY 2011, the EPA began reporting on a Superfund NPL site cleanup performance measure called "remedial action project completions." Projects under this category represent specific discrete actions, such as a particular medium remediated (as in groundwater contamination), areas of a site remediated (as in discrete areas of contamination such as building demolition), or particular technologies employed (as in soil vapor extraction). By highlighting this more focused aspect of the cleanup process as a performance measure, the EPA can monitor

incremental progress and can provide communities with greater opportunity to evaluate and hold the agency accountable for specific work conducted in the field in addition to overall progress toward risk reduction and reuse at Superfund sites.

In FY 2012, EPA completed a comprehensive “National Strategy to Expand Optimization Practices from Site Assessment to Site Completion.” This strategy institutes changes to Superfund remedial program business processes to take advantage of newer tools and strategies that promote more effective and efficient cleanups. It lays out several objectives to achieve verifiably protective site cleanups that are faster, cleaner, greener and cheaper using techniques such as site evaluation, construction and operation and maintenance throughout the site cleanup life cycle. The Strategy also capitalizes on the benefits of optimization through multiple processes, including work planning, communicating, training, implementing, measuring and cost accounting. As part of this strategy, the EPA expects its regional offices to systemically apply optimization concepts throughout all remedial pipeline phases as a normal business practice. For example, at the Pemaco Superfund site in Maywood, California, the EPA reduced annual monitoring costs from approximately \$443,000 to \$230,000 using groundwater remedy optimization strategies.

In FY 2013, the EPA undertook the Superfund Remedial Program Review as a follow on to the earlier Integrated Cleanup Initiative. The EPA also did this recognizing the need to continue to critically evaluate program resources and cleanup processes to minimize impacts brought on by budget constraints and workforce and technology changes. The Review’s Action Plan was released in November 2013 outlining short and long-term cleanup and program management

activities. Since that time, the Groundwater Remedy Completion Strategy has been released and work on a new acquisition framework is underway. Most of the activities are already underway, including continued efforts in community engagement.

The EPA has also completed four pilot projects designed to evaluate alternative approaches to achieving site cleanups more efficiently. Under these pilot projects, the EPA explored creative, non-traditional approaches for managing site cleanups with exceptional results. The projects demonstrated business process innovations that are returning property to communities sooner, accelerating the potential for reuse and the creation of new jobs. In several instances, tested approaches accelerated work at sites by roughly 50 percent or more. Lessons learned from these pilots have been shared with EPA Superfund program staff at both EPA headquarters and the regions, as well as with the Superfund remedial action contracting community. In addition, the EPA is using these pilot project results to shape the development of new Superfund contracts, policies, and tools that can be used to increase the pace of cleanup at sites.

### **CONCLUSION**

EPA's Superfund program continues to make progress in the face of a number of challenges and will continue protecting human health and the environment by responding to immediate and long-term threats through the cleanup of releases and hazardous waste sites. The EPA believes its ongoing program efforts will help support continued cleanup progress and address critical aspects of Superfund program challenges.

Mr. SHIMKUS. We thank you for your opening statement. Your full statement is submitted for the record.

I will recognize myself 5 minutes for the questioning period of time.

So, the former Chanute Air Force Base, which is in Rantoul, Illinois, it is a new part of my congressional district, is a Superfund site. BRAC funding for environmental cleanup is limited to Superfund or CERCLA hazardous substances.

How does Chanute deal with the cleanup of emergent contaminants such as perfluorinated chemicals, PFCs or PFAS that are not currently regulated under CERCLA?

Mr. STANISLAUS. Sure. As you know, Chairman, that is being led by the Air Force under CERCLA authority and these emergent contaminants perfluor and PFAS can be addressed under the CERCLA authority.

Mr. SHIMKUS. So, the ability to recruit dollars for the cleanup of these remaining contaminants should be able to be deemed through the Superfund?

Mr. STANISLAUS. Yes, so just to be clear, it is the responsibility of the Air Force. So, in terms of conducting response actions, there is no constraint under the CERCLA authority.

Mr. SHIMKUS. So, Chanute Landfill leachate has made it into the waste water treatment process and the PFCs contaminate the biosolids, which in the past have been spread on local private farm ground. What would the mechanism for cleanup be in this circumstance?

Mr. STANISLAUS. Well, I think, following, if I understand your question, in the Air Force, following the standard Superfund and CERCLA process, we would look at the areas contaminated that are contaminated above the certain thresholds. Then, the appropriate cleanup should happen.

Mr. SHIMKUS. In your opinion, how is the Superfund cleanup process working in terms of getting sites cleaned up efficiently and in a timely manner?

Mr. STANISLAUS. Sure. I mean, Superfund sites are a complicated situation. We come to the sites because of sometimes decades of mismanagement. Some of that has been enunciated earlier today.

We first try to get the responsible parties to pay for that and actually lead the cleanup of those sites and then we oversee whether the responsible party does the cleanup or we do the cleanup. Then, we do through a process.

You know, one, we want to make sure that it is technically grounded. We want to make sure it is data-driven, so it takes some time to do that. But we also recognize that we need to bring to bear in an ongoing way the best management practices to make sure we streamline that. And during my tenure, I have really pushed that really significantly. We pushed something we call optimizing. How do we build in time and cost savings? And we have done that. Looking at contractor savings and we have done that.

There are lots of examples that we have institutionalized to bring out more efficiencies to the Superfund process. But we also recognize more can be done as an ongoing commitment and we also are engaging the States in that process.



Mr. SHIMKUS. So, I think the constant refrain, and I think actually one of my colleagues who testified earlier, and I think you will hear from many members of the committee is it just takes too long. And we deal with long timeframes in a broad portfolio of interests of the Energy and Commerce Committee. And we are finding in a lot of areas that new technology, efficiencies can be created. That is part of some of our other debates. What is EPA doing to try to cut down the time line and get more efficient?

You used the word process. It was kind of weaved into the question. Surely, there must be some things about the process that we can improve.

Again, on the drug debate, we are trying to make sure some of these inspections run parallel instead of cumulative. That is cutting down the overall time. I think that is what we are going to look forward to hearing is process. How can we change process to get this stuff moving quicker?

Mr. STANISLAUS. Sure. I mean there are a lot of things as, Chairman, as you referred to, that we can learn. And one of the things we have learned is there are some opportunities to expedite the investigation process. I mean there has been some history, frankly, where investigation has gone on too long. And so how do we triangulate the investigation? How do we marry the investigation and cleanup? There are some sites that we kind of know earlier on the potential remedial options.

So, we have begun to do this optimization effort to look at those opportunities to marry some of those things that may have taken more time in the past.

Mr. SHIMKUS. We will keep encouraging you to be successful at that and kind of expedite the process.

The Chair now recognizes the ranking member of the subcommittee, Mr. Tonko from New York for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair. And you know listening to the testimony and hearing about efficiencies that should be embraced and management that should be underscored are all important but also appropriations. We are appropriators, too. And we need to understand that every action or perhaps inaction in terms of appropriations trickles down, percolates down to the local level and affects human lives. So, we need to bear that in mind.

The legacy of contaminated orphaned sites in this country is serious and, in some areas, devastating. The number of abandoned mines posing serious threats to drinking water sources in the West is shocking. Even more shocking is the fact that more orphaned sites are still being created.

As I mentioned, I believe more must be done to prevent sites from becoming orphaned in the first place. When Superfund was created, Congress required EPA to establish financial assurance requirements for the most polluting industries, to ensure that companies going into business in those industries would be solvent, to clean up any contamination they caused. This is a common sense approach that protects the American taxpayers.

Unfortunately, these rule, which were required to be initiated decades ago, have not been developed.

Administrator Stanislaus, do you believe that requiring financial assurances incentivizes facilities to manage and store their hazardous waste materials more safely?

Mr. STANISLAUS. Oh, absolutely. And we also want to make sure that in the worst case scenario a company goes bankrupt, that those financial instruments are in place to pay for the cleanup, as opposed to the American taxpayer.

Mr. TONKO. And when can we expect to see financial assurance requirements proposed under the Superfund?

Mr. STANISLAUS. Sure. The first sector was the hard rock mining, which was identified because it was the number one taker from the Superfund and it also has the highest risk from various analysis we have done. The first proposed rule will be done later this year.

Mr. TONKO. And is that in line with the schedule set out by the DC Circuit Court of Appeals earlier this year regarding hard rock mining?

Mr. STANISLAUS. That is correct.

Mr. TONKO. And has EPA begun considering which other industries are in need of financial assurance rules?

Mr. STANISLAUS. Yes, so we will also be making this decision as to whether we want to also do financial assurance for a couple of other sectors.

Mr. TONKO. Including?

Mr. STANISLAUS. Chemical manufacturing, the electric utility industry is two. I believe there is another one that I don't remember.

Mr. TONKO. OK and when can we expect requirements to be finalized?

Mr. STANISLAUS. On the first proposal of hard rock mining?

Mr. TONKO. Yes, the hard rock mining.

Mr. STANISLAUS. Yes, let me get back to you. I just don't recall.

Mr. TONKO. OK and do you envision that these new rules would complement existing costs, recovery, and enforcement procedures?

Mr. STANISLAUS. Yes, I mean in terms of—is your question, Will be it consistent with the current cost recovery procedures? Is that your question?

Mr. TONKO. Well, just would they complement existing cost recovery and enforcement procedures?

Mr. STANISLAUS. Yes, I mean, that is absolutely the intention.

Mr. TONKO. And a 2015 GAO report stated that States agreed to add sites to the national priorities list, where they encountered difficulty in getting a potentially responsible party or a PRP to cooperate, or where that PRP went bankrupt.

Do you believe States may be more likely to add a site to the national priorities list if no responsible party can step up to the pay for the cleanup?

Mr. STANISLAUS. I mean I think that is one factor that we have heard from the States but not only the factor. You know sometimes it is just the magnitude and complexity of the sites as well.

Mr. TONKO. Well, if that is the case, I think that it is likely that the most difficult orphaned sites will continue to find their way to the National Priorities List, unless financial assurances are required. Financial assurances were intended to prevent the all too common practice of polluting and then declaring bankruptcy, leaving the bill for the taxpayers to pick up. The lack of financial as-

insurance requirements has exposed the Superfund Program and the United States taxpayers to potentially enormous cleanup costs. These requirements are long overdue.

I know that some of my Republican colleagues have opposed them in the past but I hope they will join me now in supporting them to protect taxpayers and the environment and, obviously, the appropriations for some of these programs are essential to be at the appropriate level.

With that, I yield back my time, Mr. Chair.

Mr. SHIMKUS. The gentleman yields back his time. The Chair now recognizes my colleague, the vice chair of the subcommittee, Mr. Harper from Mississippi, for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman. Great to see you again.

Mr. STANISLAUS. You, too.

Mr. HARPER. And I had a few questions I would like to ask you.

When selecting the remedy for a contaminated sediment site cleanup, does EPA follow the contaminated sediment remediation guidance for hazardous waste sites?

Mr. STANISLAUS. Oh, absolutely.

Mr. HARPER. How does EPA ensure the timeliness, cost-effectiveness, consistency, and the quality of the sediment site cleanups?

Mr. STANISLAUS. Well, that is an ongoing responsibility between both the regions and headquarters, particularly sediment sites. We review everything from the investigation planning to the proposed cleanup remedy.

Mr. HARPER. So, how does EPA ensure that sediment cleanups are consistent with the contaminated sediment remediation guidance?

Mr. STANISLAUS. Sure. In our review of the site-specific factors, we look at one of the things that headquarters looks at is a consistency with the national guidance.

Mr. HARPER. Now, we understand that certain authorities are delegated from EPA headquarters to the regions. Please explain what authority is actually delegated.

Mr. STANISLAUS. Sure, I mean the delegation to the States goes back I think to the mid-1980s or so. You know it was really intended to bring out more efficiency to the process. But that being said, we also recognize the need for headquarters review. And so, again, everything from the proposed plan, you know the headquarters reviews. We also have additional infrastructure for significant costly remedies. We have a National Remedy Review Board. We have a sediment cleanup body. There is a national body of peer review experts who also look at that.

I get briefed on a monthly basis on the sites of controversial complexity. So, there is an ongoing scrutiny, frankly that we do.

Mr. HARPER. Let me, just so that I am clear, does the Administrator or someone at the EPA headquarters have the final sign-off on those remedial decisions?

Mr. STANISLAUS. The delegation envisions that it be done at the regional level.

Mr. HARPER. OK.

Mr. STANISLAUS. But again, that decision is done after significant engagement with headquarters.

Mr. HARPER. Got you. Is there a process in place to ensure that the Administrator and you, as the Assistant Administrator for the Office of Land and Emergency Management are actively reviewing and signing off on remedial investigations proposed by the Regional Administrators to ensure that they are consistent and appropriate?

Mr. STANISLAUS. Yes. As I referred to it earlier, so we have an ongoing engagement leading up to the proposed planned review, all of that.

Mr. HARPER. So, you are getting a briefing at least once a month.

Mr. STANISLAUS. Yes, on the sites of major issues.

Mr. HARPER. And how are you drawn into it into a deeper way, let us say, on a specific situation? Does that vary case by case?

Mr. STANISLAUS. Well, again, my technical staff reviews evidence from the data and the guidance. And depending on those issues, I get briefed on sites.

Mr. HARPER. Well, let me ask this. If you can recall, are remedies proposed by the regions ever changed by you or the Administrator?

Mr. STANISLAUS. It definitely gets changed through the head-quarter involvement, absolutely.

Mr. HARPER. So, what would draw it to your attention? Are you reviewing every proposal or just in an overall briefing of the entire review process?

Mr. STANISLAUS. Yes, I mean you know I get briefed at various levels, depending on the site. Sites are very large, very complex, which really are sometimes a precedential nature. Take a hard look at that, involving a mixture of proposed future uses, cleanup remedy alternatives. So, all of that goes into the mix of the decision-making.

Mr. HARPER. I want to make sure that I am following you and I have got this; that I am understanding what you are telling us. Normally, those remedies, they are going to just proceed and you are not going to be reviewing every remedy that comes into the agency. Am I correct, as far as making the decision how to proceed from the start?

Mr. STANISLAUS. Well, yes. I mean so, again, we have my staff reviews, at a technical level, the data and the technical issues. And I get briefed at a certain level. And where there are potential areas of major significance, then I get more deeply involved, depending on the precedential nature of that decision on particular sites.

Mr. HARPER. And if you don't like what you see or you don't think it is the right course, then you will pass on that decision.

Mr. STANISLAUS. Yes. Well, sometimes I would ask for taking a hard look at an alternative or is there enough data to support this decision. It kind of depends on the site.

Mr. HARPER. Thank you very much. I yield back.

Mr. SHIMKUS. The gentleman's time has expired.

The Chair now recognizes the ranking member of the full committee, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman and thank you Mr. Stanislaus.

I wanted to focus on three concerns, all related to the funding of the Superfund program. First, how pays? Second, the delays brought about by dwindling funds. And third, a falloff in the quality of cleanups brought about by dwindling funds.

So, as we all have discussed, the Superfund tax was created to cover the cost of cleanup when potentially responsible parties could not pay or could not be ID'd. In my view, this fund was the crowning achievement of the Superfund because it ensures that polluters paid for cleanups even at orphaned sites.

And since the funds from that tax were exhausted, funding for cleanups at orphaned sites has come through the appropriations process, drawing from general treasury funds. That is correct.

Mr. STANISLAUS. That is correct.

Mr. PALLONE. I think that is just fundamentally wrong. The cost of cleanup should be paid for those who get rich off contaminating these sites. And it is not just a question of fairness. Since the tax expired, funding for Superfund cleanups has decreased dramatically by about 45 percent since 1999.

And I have a list of sites provided by your staff which are waiting for funding. There are about 12 sites on the list that I have. And for the communities around these sites—you have the list, Mr. Stanislaus, correct?

Mr. STANISLAUS. I am sorry. Say that again.

Mr. PALLONE. You have the list with the 12 sites?

Mr. STANISLAUS. I am aware of that. I am not sure I have it with me right now.

Mr. PALLONE. OK, well, you are aware of it.

Well, what I wanted to ask you is for the communities around these 12 sites, what is the impact of your limited funding, if you would?

Mr. STANISLAUS. Well, I mean it is delayed cleanup, delayed recovery, delayed protection, and delayed economic land use benefits.

Mr. PALLONE. OK. And we just heard a few minutes ago from our colleagues from Missouri how serious the effects of these cleanup delays can be for the communities. And we also have our colleagues speaking about the tension over what remedies should be selected, whether pollution should be removed or capped in place. Mr. Spiegel, who is going to testify in the third panel is very familiar with how we have to deal with that in a given situation.

Often, the community around the site wants the pollution removed completely. A lot of times, that is a lot more costly but it also ensures, in a way that institutional controls cannot, that there will be no future human exposure to these contaminants from the site.

So, Mr. Stanislaus, can you explain how the limited funding available for Superfund cleanups affects decisions about how to clean up these sites, removal versus capping or whatever?

Mr. STANISLAUS. Well, I don't think the limited pot of money has an influence on the remedy. It has an influence on how many sites we can take on every year.

The remedy selection we go through this process under the underlying regulations where we look at the opportunity to a permanent cleanup, the short- and long-term benefits. So, it all goes purely from a technical legal consideration. And I think the relevance of cost is really, as you noted, that we are going to have a backlog of sites, as we do right now.

Mr. PALLONE. But isn't it true that in many cases—I don't know many cases but certainly in some cases—that you do end up cap-

ping the site as sort of an interim measure because the funds are not necessarily available to do the final cleanup?

Mr. STANISLAUS. Well, interim remedies are all done for technical reasons. Sometimes we do interim remedies to create a temporary block of exposure, while we examine the long-term remedy. You know so I wouldn't say that putting in a temporary measure is driven by the unavailability of cost. And it could be that the unavailability of funds delay the pace of executing the cleanup.

Mr. PALLONE. OK. Well, I appreciate your comments and I appreciate the fact that the chairman had this hearing.

And I just hope that we will all work together to do the most important thing that we can do and that is reinstate the Superfund tax. I remember when it was expiring, I think Gingrich was the speaker at the time and President Clinton was very emphatic that he wanted to continue it and Speaker Gingrich said no.

I think we can debate tweaks in policies but, without funding these policies are meaningless. So, we are just going to see more communities waiting for cleanups and more communities dissatisfied with the cleanups that are being done. So, I really think the most important thing is reinstating the Superfund tax.

I yield back, Mr. Chairman.

Mr. SHIMKUS. The gentleman yields back his time. The Chair now recognizes the gentleman from Pennsylvania, Dr. Murphy, for 5 minutes.

Mr. MURPHY. Thank you, Mr. Chairman. Thank you for this hearing.

I was visiting a business in my district a few years ago, and I went down there with some folks to see this site on their factory that they have not been able to use, part of a warehouse that was involved in some Government contract research using some materials that were radiation-contaminated, not in high levels but enough that they weren't supposed to go in them.

It was some things the size of oil drums and they were filled with concrete and rags and they were materials that contained radioactive materials at one time. And they weren't allowed to touch them.

So, we went down there and visited and talked with the Army Corps of Engineers and EPA and said what would it take. They said we are going to have to study this, do several studies. I am planning on lots of things. It is probably going to take about 11 years and maybe \$1 million or more.

And I said what will you do with it at the end? We will pick it up, we will move it. We will take it to the approved site and there they will seal it and bury it.

In the meantime, the business couldn't use their building. So, I said so well what is to stop them from going out and getting a dump truck, put all the stuff in a dump truck, load it in, drive it to the same site and just say keep the truck? And they said, well, we wouldn't recommend that because they have to go through the studies.

And I said well, wouldn't you do the same? And they said well, basically, in the end, that is what we are going to do. So, you can understand the incredible frustration from business saying why are we going to lose out on using this site and having this problem,

when basically the resolution is the same. I am sure you can understand and appreciate the frustration that people have with taking so incredibly long to do something.

But let me ask you about some timeframes on this. And, again, thank you for being here. We know this is not easy. And we know you have got to crack the whip and make some things work and we want you to do it right but the public doesn't understand.

So, the nature of these sites being cleaned up under CERCLA has changed since CERCLA was enacted some 35 years ago. The sites remaining to be cleaned up today are more complex, like sediment or mining sites.

So, do you think that the Superfund program needs to change and adapt to deal with the new challenges associated with these more complex cleanups? I mean do we need to do something different?

Mr. STANISLAUS. Well, I think we need to specifically call attention to particular differences, a sediment site and a mining site. So, for example, a sediment site, the approach of well let us call it adaptive management, so we want to move forward with some level of immediate cleanup and learn from that. Just because the complexity of sediment sites are much longer, much wider—

Mr. MURPHY. So, let me just make sure I understand. So, does everybody have to follow the same set of rules regardless of the site, then? Or are you saying a mining, a sediment site, a hazardous waste material site versus something buried, is it the same rules everybody has to follow all the time that adds to some of the timing and burden?

Mr. STANISLAUS. Well, you know I would say the same basic rules. One, you want to fully investigate the site. And then you want to select a remedy, based on investigation.

But the differences I was referring to is that when you are in the water, it is far more complex than when you are on land in terms of doing cleanup. Sediment sites you tend to have a much wider breadth of area, much more complexity in terms of science. You have you are in the water, you have a mixture of sediments that are buried under sometimes decades of sediment and fill, so a bit more complex.

Mr. MURPHY. Let me ask. When it does involve some radiation materials, does that go under the Nuclear Regulatory Commission or is that under you?

Mr. STANISLAUS. Well, I guess, depending on the site. We have Superfund sites.

Mr. MURPHY. Sure.

Mr. STANISLAUS. And then you have radiological materials and that would be under the Superfund Program.

Mr. MURPHY. And do you review and monitor the efficiency of those who are doing those? I know Mr. Johns from this committee has an area he talks about in his district, where it has taken years to do this, and records may indicate a lot of people are putting in overtime who haven't even put in hours and a massive amount of waste. So, I just wonder if you audit those things, too, and say why is it taking so long. Is there something in the nature of this particular project?

Mr. STANISLAUS. Well, I mean what we try to do is, up front, look at how do we kind of make sure that the process work is intended and build in efficiency to better extend possible——

Mr. MURPHY. But you understand efficiency is not a word that we think as associated with this agency.

Mr. STANISLAUS. Well, I mean, I think we can agree to disagree on certain aspects of it. Because what I have done under my——

Mr. MURPHY. Yes, but years, and years, and years is not efficient. So, let me just ask this.

Mr. STANISLAUS. But this is decades of mismanagement.

Mr. MURPHY. I appreciate that.

Mr. STANISLAUS. Decades of hazardous substances.

Mr. MURPHY. Thank you.

Mr. STANISLAUS. And getting to understanding the complexity of the problem, it is technically challenging. I think every technical expert will conclude that discerning the magnitude of the problem does take some time.

Mr. MURPHY. So, let me ask if we could——

Mr. STANISLAUS. That is not to say that efficiencies are not important.

Mr. MURPHY. OK. I would love to be able to meet with you one-on-one to talk about a couple of the sites——

Mr. STANISLAUS. Sure.

Mr. MURPHY [continuing]. Review that, and then get some more in-depth information.

We want you to be empowered to make this efficient and change the mismanagement over time, whether it is on the site or whether it is in your agency. And I appreciate that opportunity.

Thank you, Mr. Chairman.

Mr. SHIMKUS. The gentleman's time expired.

The Chair now recognizes the gentleman from Oregon, Mr. Schrader, for 5 minutes.

Mr. SCHRADER. Thank you, Mr. Chairman. And welcome, Mr. Stanislaus. Thanks for coming here. It is a tough hearing, but it is a very important hearing.

As you know, I am primarily concerned about the Portland Superfund site and the Willamette River back home in Oregon. And I am concerned a little bit about the data being used, to be honest with you. This has been in process for a long time. I appreciate the fact that we are coming to a record of decision, hopefully soon.

But some reservations still remain. I mean it has been clear to me that this Superfund site is actually cleaner than some of the sites that have been cleaned up. You can swim in the river. No problem. You can eat the native fish out of the river. No problem. You know I think it is good to do things as well as possible.

But I would like to see the feasibility study and the proposed plan to be based on good science. Right now we are talking about nonnative fish being eaten by local residents that are fishing in that harbor on an extended basis that is not really very realistic. So, I am hoping that as headquarters reviews some of the data, they take that into account. We want to have an efficient process.

I know in 2012 you tried to look at ways to be innovative and adaptive to local conditions. And I am not sure I am seeing that.



My colleague from Mississippi talked a little bit about what role the headquarters has.

To that point, what role do you play in terms making sure there is consistency across the country in how these standards are applied so that you don't have one region getting a little carried away and not paying attention to what has been done overall around the country so we can allocate the resources most effectively?

Mr. STANISLAUS. Sure. So, the structure we have in place right now is we have what I would characterize as some up-front infrastructure. So, we have guidance to promote national consistency in terms of cleanup, in terms of remedy selection. And then we have site-specific reviews of proposed cleanup above a certain monetary amount. So, we have a national body of experts called the National Remedy Review Board. We have separately a sediment group that looks at sediment sites from a national perspective to provide independent technical review while we are looking at other alternative ways of achieving the goals. Have the goals been set appropriately?

And then based on that, then I get briefed from various periods of time in the decisionmaking process.

Mr. SCHRADER. Now, to that, I guess I am a little concerned because the only solutions I have seen proposed originally and even now in the proposed plan is just dredging and capping. I mean it seems to me there ought to be other alternatives that we would want to consider.

What role has the State of Oregon played, prior to the release of the proposed plan? Have you resolved most or all of the issues that the State has brought up?

Mr. STANISLAUS. I believe that is the case. I mean we believe the State is an important partner in moving this forward and my understanding is that the proposed plan is aligned with the State's perspective.

Mr. SCHRADER. All right. I am not sure I 100 percent agree but that is OK.

To the point on cost and realistic assumptions and stuff, how accurate has EPA's sediment site cost estimates been in the past? I would reference in Tacoma a couple of waterways where the costs eventually were 3 times and almost 100 percent more in another case than what was originally estimated. How accurate do you think the estimates are, in general?

Mr. STANISLAUS. Well, I don't have a comprehensive survey or assessment in front of me but I can get back to you on some of those sites.

Mr. SCHRADER. I guess a similar question, then, I would like to get that information would be on the estimating how long it takes to clean up a site. The time period for the Hudson River dredging, how long did you think that was going to take and how long did it eventually take?

Mr. STANISLAUS. Sure, I will get back to you specifically. I think the Hudson River was actually widely viewed as successful by many, in terms of the timing and the accomplishments there. But I will get back to you on the specific timing.

Mr. SCHRADER. All right. And again, it raised a question because I am not sure I am every going to agree with that assessment.

And the biggest issue from I think, well many issues in the Portland area, but the proposed plan compared to some of the original suggestions is exactly the same plan, in terms of dredging, capping, natural recovery, and yet the costs were, seemingly, arbitrarily reduced from \$1.4 billion down to \$750 million with not a lot of change what actually is going on. And we are very concerned that the local Region 10 is being overly optimistic in its assumptions about how it is going to take to do some of this stuff, what affect this new landfill location closer to the Superfund site itself is going to have.

So, we are very concerned that unrealistic modeling is going to cause some real serious problems for the folks that are willing to step up, many that were not there when the original contamination occurred, in trying to take care of the place. So, I would hope that before the record of decision you guys would re-look at that and take that into account.

Mr. STANISLAUS. Sure.

Mr. SCHRADER. With that, I will yield.

Mr. STANISLAUS. I would like to speak a little bit about the change of the cost.

Mr. SCHRADER. Please.

Mr. STANISLAUS. Clearly, it was driven by looking at some optimization. So, the remedy has, in fact, changed from the proposal, the extent of excavation versus capping. So, while the basic elements are the same, the extent of each is what has driven the cost. And I have personally reviewed it. I have had my staff personally look at it. So, we are going to continue to be involved in it and continue to review the comments. I know there has been a lot of commentary that we are going to take a look at.

Because we know that various parties, the local government entities and private sector entities have commented as well as the local community.

Mr. SCHRADER. If I could get the Chair's indulgence, just for quick second, if I may.

Now, I am looking at the proposed plan remedy and the NRB remedy. The cost of the proposed plan is \$750 million. Originally, NRB, \$1.4 billion. Dredge volume 1.9 million cubic yards in both situations. Construction duration 7 years in both situations. Active cleanup areas 290 in the proposed plan, 300, so a mere 10-acre difference there. Natural recovery, 1800 acres in both; 1900 lineal feet riverbank remediation, virtually the same in both.

I am just not sure I have seen any change in the plan to justify that reduction in cost. I am just very worried, sir, just very worried.

And I yield back.

Mr. SHIMKUS. The gentleman yields back his time. The Chair now recognizes the gentleman from West Virginia, Mr. McKinley for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman. And Mr. Stanislaus, it is good to see you again.

Mr. STANISLAUS. You, too.

Mr. MCKINLEY. Your office has been very good to work with over the years on some of these matters.

My district and Congressman Johnson, we share that along the Ohio River, is an old area, old mature industries of chemical and steel, glass, pottery, that have been ripe over the years for problems with Superfund. So, I think that in my career, or my life as an engineer, I have experienced quite a bit of that about the Superfund sites and the contamination that occurs with that.

Under the Superfund site, there is a concern that, and maybe it is valid, is that when a Superfund site is designated as a Superfund site, there becomes a stigma on that area. Would you not agree that if you have got land, 100 acres or so that has been designated a Superfund site, that would cause you to be concerned about locating a school next door to it?

Mr. STANISLAUS. Well, I think any contaminated site creates a concern. We have done studies and I have independent studies that show that once a site is cleaned up—

Mr. MCKINLEY. No, no, I didn't say that. I say whether it is designated. Once it is designated a site, because I am going to lead into it—

Mr. STANISLAUS. OK.

Mr. MCKINLEY [continuing]. Is that I think it has a stigma and an effect on other development around it.

And unfortunately, there was an article that came out earlier this year—I would like you to respond to it—by a conservative group, the Daily Caller. But Ethan Barton came out in April of this past year and through his investigation, found out, and I think it follows a little bit about what some of the other folks have been talking about, that these sites that get designated as Superfund may not get any attention for years.

Let me give you some statistics that show up in this. That there are two-thirds of the sites that have been designated, nothing has been done with it. So, 771 of the 800 sites have been waiting 5 years for something to be done with it; 154 of those designated sites have been waiting 30 years before work has even begun on it. And it is a stigma on that community and people are concerned about what their water quality, any other air quality, anything else that comes with it. And then they found that once it gets designated in cleanup, sometimes, according to that, that it might take 30 years, 13 years on average to clean up a Superfund site. Look 54 of them apparently took 20 years, 20 years to clean up and all that while the water was contaminated or the air was contaminated with it, the soil contaminated with it. The community was stigmatized with it by having this.

So, Mr. Stanislaus, what can we do to address this problem? Because once we designate this and we put this red mark on a community or a site, why should we be waiting 20 years before something happens with it or 54 years before something begins?

Mr. STANISLAUS. So—

Mr. MCKINLEY. I am sorry. I don't mean to blind side you on that, but on Barton's article, have you seen this article at all?

Mr. STANISLAUS. I have not. I will take a look at it.

Mr. MCKINLEY. If you would, take a look. I would like to hear back from you on that.

So, what is holding it up?

Mr. STANISLAUS. Well, I would say that the original stigma is the mismanagement of site that comes from decades of work.

Mr. MCKINLEY. I understand that, but we can't go back and redo that. But once you have designated it, I want you to do something.

Mr. STANISLAUS. So 68 percent of sites on the National Priorities List have what is called construction completion. So that means all of the construction of the cleanup remedy is in place. Now, sometimes, for example, groundwater, groundwater does take decades but redevelopment can happen and that does happen once you have construction completion.

Mr. MCKINLEY. Completion but you just heard what I said. Some of these sites have taken 54 years, on average it is 13. I have seen some success and we have had it in the Weirton area, the Business Development Corporation with Pat Ford and what he has done out there. They took a site that had been abandoned. It was a contaminated site and now they have got people working on it. It is functioning. So, my hat is off to Pat Ford and the whole group up there but they have got to get it finished, not Pat Ford but on all these others.

If we have all these sites waiting 20 years, 13 on average, that is too long. I want to know what does it take to get it done quicker?

Mr. STANISLAUS. Well, I think ongoing diligence of the management of those sites, I completely agree. However, I don't think 13 years is accurate from this perspective.

So, you can have productive activity at a site while the long-term cleanup is going on. There are numerous sites where companies have site on a Superfund site where groundwater cleanup or other kind of cleanup is continuing.

Mr. MCKINLEY. I have run out of time on that but again, could you please get back to me and explain your perspective on Barton's article?

Mr. STANISLAUS. Sure.

Mr. MCKINLEY. Thank you, I yield back.

Mr. SHIMKUS. The gentleman's time has expired.

The Chair now recognizes the gentleman from California, Mr. McInerney, for 5 minutes.

Mr. MCINERNEY. Well, I thank the Chair for holding this hearing. I just wanted to respond to Mr. McKinley. If there is no funds, then we are not going to be able to get this done. And I think Mr. Gingrich did a good job of reducing funds. So, we need to restore those funds if we want to get onto those sites.

Mr. SHIMKUS. If the gentleman will yield, we could start going down this route and talk about majorities and I think we best just move forwards.

Mr. MCINERNEY. Yes, thank you, Mr. Chairman, for that bipartisan comment.

Mr. Stanislaus, much of the debate around Superfund sites now revolves around whether pollution should be removed or controlled on site using land restrictions or other institutional controls. In most every site now, is that a discussion? Is that a debate?

Mr. STANISLAUS. Well, I think that, broadly, the extent of removal of contaminants, whether you can treat contaminants on-site or a mixture of that and leaving things in place, at the end of the

day, we are driven on preventing ongoing exposure. So, it can happen through a mixture of those.

Mr. MCINERNEY. Well, as an engineer, I understand what it means for pollution at a site to be addressed through engineering controls, on the one hand, or institutional controls on the other hand. Institutional controls aren't as clear as engineering controls. Can you explain what the difference between those two is?

Mr. STANISLAUS. Sure. Engineering control is really, for example, a concrete barrier. Institutional control would be, basically, a legal prohibition of doing certain activities. For example, a legal prohibition of digging beyond this kind of a cap for example.

I do agree with you that making sure that institutional controls are effective is one of the things that I have really tried to enforce since I have been in this job, really making sure that there is ongoing consultation with the local government to make sure that those kinds of institutional controls are actually adhered to and effective and/or are enforced.

Mr. MCINERNEY. Do you think more clarity is needed either in revisions to the National Contingency Plan or through guidance on making these choices?

Mr. STANISLAUS. Yes, I am not sure necessarily an amendment to the National Contingency Plan is necessary. I mean just, I am trying to remember, 3 or 4 years ago we issued a guidance on the whole issue of institutional controls, making sure it is a hard look at whether it is effective and implemental, this consultation with the local government. So, I think rigor to the use of that in the appropriate circumstance is really important.

Mr. MCINERNEY. Thank you. So, back to the funding issue. How many employees do you have that work on the Superfund sites issues?

Mr. STANISLAUS. Let me get back to you with a hard number on that.

Mr. MCINERNEY. OK, are we talking thousands or are we talking tens?

Mr. STANISLAUS. Well, I mean it is in the hundreds but I don't want to give a fixed number. Let me get back to on this one.

Mr. MCINERNEY. All right. How many Superfund site are there?

Mr. STANISLAUS. Well, on the National Priorities List, we have a about 1700 on the National Priorities List. But we get sites to our attention on a regular basis. These are just the real-time remedial sites. Every day we have to immediate response because of drums left behind, spills happening. So, it is hundreds of sites that we kind of manage on a regular basis.

Mr. MCINERNEY. Well, as my good friend Mr. McKinley said, it takes 13 years on average, and I will take your word on that. That sounds about right. How many new Superfund sites do we get per year? I mean are we keeping ahead of it or are we falling behind on the number of Superfund sites?

Mr. STANISLAUS. Well you know we, as was noted earlier, we have a backlog of about I think 12 to 15 sites that we need funding for by the end of this fiscal year. But then in the next fiscal year, that could probably be projected to grow to 20 to 25.

You know the function of the National Priorities List is to identify the highest priority risk sites. And ideally, we have a respon-

sible party step up and address that. That is not always the case because we have bankruptcy or inability or unwillingness that the Federal Government has to step in. So, there is a delta, there is a gap.

Mr. MCINERNEY. Well, my district has Superfund sites and I was just wondering what you think the cost of the communities and the people living in the area is. I mean, Mr. McKinley brought this up. It is a black mark on the community. Property values are affected and this can go on for generations, basically. So, how can we mitigate these effects on people's lives?

Mr. STANISLAUS. Yes. Well, yes, I completely agree that delayed cleanup means delayed public health benefits and delayed economic benefits. Within the constraints I have, I am always given a certain flat amount in appropriations and we have this prioritization process based on risk. And we take on those sites based on the limited funding.

Mr. MCINERNEY. Thank you, Mr. Chairman.

Mr. SHIMKUS. The gentleman's time has expired.

The Chair now recognizes the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman. And Mr. Stanislaus, thanks for joining us today.

Are you familiar with the Contaminated Sediment Technical Advisory Group and the National Remedy Review Board? And if so, could you please explain what those entities are and how they fit into the remedial decisionmaking process?

Mr. STANISLAUS. Sure. So, these are two national group of EPA experts to provide independent advice on cleanups. So, the National Remedy Review Board looks at sites, at this moment, \$50,000 or more, and have independent technical review, peer review, looking at the nature and extent of investigation, the potential cleanup options available to them.

The Sediment Group looks at, obviously, sediment sites, with a similar function.

Mr. JOHNSON. OK. Well, what is EPA Headquarters doing to ensure that technical recommendations from the National Remedy Review Board and the Contaminated Sediment Technical Advisory Group are being followed and incorporated into remedy decisions?

Mr. STANISLAUS. Sure. So, I mean directly we have headquarters presence on both of those bodies. And then the technical comments are transmitted to the region itself.

But then once you come to a proposed plan, we review the proposed plan, in terms of have relevant aspects of those comments been incorporated. And just more broadly, have the pertinent guidance and regulations been adhered to in the selection of the proposed remedy?

Mr. JOHNSON. Are there checks and balances? Specifically, the Review Board or the Advisory Group recommends this. Was this included the particular proposal? How are you ensuring that the recommendations are being followed and incorporated?

I mean I hear what you say about how the process works but I didn't hear the part about how are you making sure that the recommendations are being followed.

Mr. STANISLAUS. Well, I would say it is in the mix of everything else we review. So, the Remedy Review Board would transmit comments technically in nature.

Mr. JOHNSON. Is there any feedback to the Advisory Group or the Review Board on where their recommendations stand?

Mr. STANISLAUS. Yes, I would say, typically, there is back and forth after the issuance of the recommendation. Sometimes the recommendations are—

Mr. JOHNSON. I am sorry. I guess what I am looking for, is there a scorecard? I mean from my military background, when the IG comes in and the IG finds these kinds of issues in your Operational Readiness Inspection, there is a report that goes back from the organization to the IG to say this is how we have addressed your recommendations or the requirements to mitigate any short falls. Is there any kind of score card that ensures that the recommendations from those bodies are being adhered to?

Mr. STANISLAUS. Well, I would say this body does not really function as an IG. It really functions as a science—

Mr. JOHNSON. I know that. But the recommendations are supposed to be adhered to, right?

Mr. STANISLAUS. Yes. Yes, and so, again, some of those comments are can you develop more data in this regard or conduct more sampling in this area before I make the remedy. So, we have reviewed that plus broader issues, in terms of adherence to national guidance and regs.

Mr. JOHNSON. Well, obviously, you can tell from my questions, that the committee is concerned with EPA regions' compliance with both the National Contingency Plan and the sediment guidance at sediment sites.

So, can you tell me the requirements for the regions to document how they are following the sediment guidance?

Mr. STANISLAUS. Well, the sediment guidance lays out almost like the how in terms of how should sediment sites be investigated and remedy selected. So, ultimately, that just gets imbedded in the proposed plan. And then during the proposed plan, then we solicit input from both potential responsible parties and the public both in terms of have we adhered to the guidance or other aspects of the proposed remedy.

Mr. JOHNSON. OK, I am not sure I see the clear connection, but my time has run out.

Mr. Chairman, I yield back.

Mr. SHIMKUS. The gentleman yields back his time.

The Chair now recognizes the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. And thank you, Mr. Stanislaus, for joining us today and to discuss ways we can improve the Superfund and protect local communities from toxic sites.

I know you heard from a lot of Members on their particular problems. And in our district in East Harris County, Texas, we are concerned about the San Jacinto River Waste Pits, a toxic site that was polluted with dioxin, a cancer-creating chemical, into the river in Galveston Bay for decades from the 1960s. This site was added as a Superfund site in 2008 at both my urging and Congressman Ted Poe. And nearly a decade later, families in East Harris County

are still waiting for the final decision from the EPA and for some piece of mind that the site will be permanently cleaned up.

Six months ago, a barge pierced the temporary covering over the site and that polluted this historic river even more. We do have a responsible party who is responsible for that cleanup.

Last week, the Harris County Health Department sent letters to residents near the waste pits advising households not to drink their tap water, due to the possible dioxins contaminating local private wells. This area is an unincorporated area, so people have private wells and there are some water districts. It is not in the City of Houston or the City of Baytown. It is between those two cities.

So, Mr. Stanislaus, what is EPA doing in response to the county health department's advisement about the possible pollution of ground water that these people drink?

Mr. STANISLAUS. Yes, so we have worked with the county and local government officials in terms of the conduct of the sampling. In terms of the advisory itself, that is really the province of the local government.

In terms of the long-term remedy, we expect by the end of the summer to have a proposed remedy to have a permanent solution to that situation.

Mr. GREEN. Well, I know the local government doesn't have responsibility for groundwater, though. These people have private wells on their own property and even businesses. But if it is being polluted by dioxin from this facility, it is actually the responsible party who is supposed to clean that up. Is the EPA encouraging them to be able to provide bottled water? I don't know what you can do if the groundwater is polluted except remove all that dioxin that is there. And I know in that particular region, we have had EPA clean up a number of our dumping pits that were there before EPA was even created and they have been able to move that soil. Although this is actually in the water, so it is going to be even more expensive to remove that as much as possible from that site. Because to this day, it continues to pollute the San Jacinto River.

What time line for the final decision? Did you say a final decision may be by October?

Mr. STANISLAUS. I think the plan is to present a proposed plan later this summer. And they are going to have a series of public hearings, public comment period. Based on that, typically anywhere from 60 to 90 days. And then after that time, we would incorporate the comments and make a final decision.

Mr. GREEN. OK. I, along with our Harris County Attorneys' Office and the local community organizations such as the Galveston Bay Foundation and San Jacinto River Coalition, we have called for the EPA to fully dredge and remove the toxins from the San Jacinto River. And local residents believe strongly that only the full removal of dioxin and toxic chemicals in the Waste Pits will permanently protect their families.

This is a growing area of Harris County but it is also an industrial area, historically. So, we are concerned that EPA, which used a cheaper option that would keep the dioxins in place because a stone cap that may erode over time and fail during a major hurricane. In 2008, Hurricane Ike actually went over that facility there and the San Jacinto River off of Interstate 10.



What is the EPA doing to ensure the community's wishes are being fully considered?

Mr. STANISLAUS. Well, that is definitely something part of our current considerations and part of what we would engage the community in the proposed remedy.

So, typically, we would present a primary or sometimes alternative remedies, with a mixture of complete removal, part removal, part and in place and walk through the regulatory criteria for each of them. And we will have a public meeting based on that.

Mr. GREEN. EPA had a hearing like that back in February and the community was united on not having a short-term solution. The temporary cap is not working. And even if you put a harder cap on there, that area is growing with barge traffic. And since it is right on the San Jacinto River, where there is a great deal of barge traffic because of the energy industry, that is why a permanent solution is the only solution.

And I appreciate you being here but we are going to keep trying to make sure that that site, like the other sites in our East Harris County who have been cleaned up, we want it removed and permanently dealt with so the people there can feel comfortable with what they are getting out of their groundwater.

Mr. Chairman, I know I am over time but, as you heard from other Members, these are really important issues in our district. And I appreciate you being there. We will continue to work with EPA to see if we can get a permanent solution.

Mr. SHIMKUS. The gentleman's time has expired.

The Chair now recognizes the gentleman from Texas, Mr. Flores, for 5 minutes.

Mr. FLORES. Thank you, Mr. Chairman. Thank you, Mr. Stanislaus, for joining us today.

My first question is this. The States play an important role in the Superfund cleanup process. Do you feel that the current role of the States in the process is appropriate?

Mr. STANISLAUS. Well, again, we make sure we view States as a partner through this whole process. So, we do some up-front sharing of resources, have the State lead on some investigation, consult the States on before we list a proposed site. But we also recognize the States have raised this issue of whether we are appropriately and effectively incorporating their requirements.

We have stood up this process with the States. I think you are going to hear later from a witness. I think there is more we can do, frankly.

Mr. FLORES. Well, let us take that one step deeper. When CERCLA was enacted, very few States had any sort of a cleanup program under the Superfund process. And now, practically, every State has its own cleanup program. Do you agree now that we have—since the States have better infrastructure to deal with this, should more sites be cleaned up under State programs, where the States take the lead, rather than Superfund?

Mr. STANISLAUS. Well, I think it is a shared responsibility. And I think we engage the States. There are certain sites that States want to take the lead and that is absolutely appropriate. A lot of times the States turn to us, given the complexity and the magnitude of the site. Sometimes it is an imminent situation.

So, I don't disagree with you that where the States want to take the lead, we absolutely would support that.

Mr. FLORES. OK. And the next question is this. What steps is the EPA taking to ensure that any new financial assistance program that is developed under CERCLA Section 180(b) reflects real world scenarios and is not exaggerating the risk and cost of future liability?

Mr. STANISLAUS. Sure. I mean we are in the process of doing that right now. We have engaged both industry, as well as the States, particularly the largest States that have significant mining, operations of financial assurance and we want to make sure that neither is there any duplication or preemption. So and our intention is to do that.

Mr. FLORES. OK. Mr. Chairman, that is all the questions I have and I yield the balance of my time to somebody that needs it or I can yield back to you.

Mr. SHIMKUS. The gentleman yields back his time.

The Chair, seeing no other Members present, would like to thank you, Mathy, for coming. Again, you have been here numerous times.

We would ask that you respond to some of the colleagues who have asked specific questions on more details or maybe one-on-one conversations on specific sites. We know it is a difficult process. We all think we can do better and that is what we will explore in the years to come in the next Congress. So, what we might be able to do to move the ball down the road a little bit better.

So, with that, we would like to dismiss you and we will ask the next panel to take their seats.

Mr. STANISLAUS. OK, thank you.

Mr. SHIMKUS. So, we have got people coming and going. We will let them leave the committee room and we will get started.

So, we want to welcome the last panel for today. We want to welcome you for your presence and for sitting in all morning. I think it is very instructive and we appreciate your expertise.

We will go for opening statements from the left to the right. I have got the introductions here. So, we will start with Ms. Brittain, who is in Environmental Programs Manager, Site Remediation Section, Land Protection Division of the Oklahoma of Department of Environmental Quality on behalf of our friends at ASTSWMO. So, welcome.

You are recognized for 5 minutes. Your full statement is in the record.

**STATEMENTS OF AMY BRITTAIN, ENVIRONMENTAL PROGRAMS MANAGER, SITE REMEDIATION SECTION, LAND PROTECTION DIVISION, OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY, ON BEHALF OF THE ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS; MARIANNE LAMONT HORINKO, PRESIDENT, THE HORINKO GROUP; STEVEN NADEAU, PARTNER, ENVIRONMENTAL PRACTICE GROUP, HONIGMAN MILLER SCHWARTZ AND COHN, LLP; AND ROBERT SPIEGEL, EXECUTIVE DIRECTOR, EDISON WETLANDS ASSOCIATION**

**STATEMENT OF AMY BRITTAIN**

Ms. BRITTAIN. Good morning, Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee. And I thank you for the opportunity to speak at today's hearing.

As you said, I manage the Superfund Program for the State of Oklahoma but I am here on behalf of the Association of State and Territorial Solid Waste Management Officials, or ASTSWMO. And ASTSWMO is an association representing the waste management and cleanup programs of 50 States, five territories, and the District of Columbia.

States play a key role in the Superfund process. We work closely with EPA to ensure that cleanup of Superfund sites in our States are appropriate, efficient, and cost-effective. Additionally, the Association works to address inconsistencies in how the program is managed from EPA region to EPA region.

An ongoing concern for our State members is a process EPA follows to identify State regulations as potential applicable or relevant and appropriate requirements or ARARs. States across the country have raised concerns to EPA including inconsistencies in ARAR determination from one site to another, lack of written documentation on the rationale used to determine ARARs, and lack of early opportunities for the States to have a say in the ARAR list of a site.

Over this past year, EPA has invited representatives from States to participate as members of a workgroup to develop tools to improve the ARAR identification process. And ASTSWMO appreciates that invitation but we suggest that the next step is for EPA to continue to engage States and to have an open direct dialogue with States on policy decisions on whether or not a State regulation is an ARAR. Superfund sites should be cleaned up to the same standard as other cleanup sites in our States under our State programs.

Another growing concern for States is the financial burden that we face with operation and maintenance cost, especially on complex, long-term remedies such as groundwater treatment systems.

Now that Superfund has been around for 35 years, a lot of sites are now in this operation and maintenance stage and States are obligated to pay 100 percent of operation maintenance costs on these sites. States are working with EPA to find ways to optimize remedies. EPA has implemented a remedy optimization program to try to review sites and look for potential optimizations. And States encourage EPA to perform these optimizations as early as possible so that cost savings and efficiencies are realized before the financial burden falls entirely to the States.

Another issues that ASTSWMO is working on are Superfund State Contracts. A Superfund State Contract is a binding agreement between the EPA and an individual State that defines the terms and conditions for both parties to share remedial cost at a specific site. States have concerns with the lack of detailed line item documentation on what EPA has spent on a site remedy. States get very little information on how the cleanup costs have been spent but we are expected to pay for 10 or 50 percent of the cost incurred.

Another issue is the lack of timeliness for final financial reconciliation of these contracts. Many existing contracts have never been reconciled.

Additionally, States have experienced lack of adherence to the contract requirements by EPA.

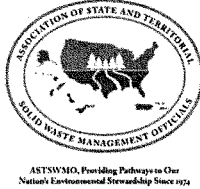
With input from States, EPA revised the model clauses for Superfund State Contracts in late 2015. The new model provisions address several concerns of the State. However, many existing contracts will continue to cause problems for States.

Superfund is a very important program that provides a mechanism for cleaning up properties that pose a threat to human health and the environment. State participation in this

program is critical to success. States are important stakeholders because of the financial obligations of MATCH and long-term operation and maintenance. As co-regulators, States want to be real and meaningful partners in this process and will continue to work with EPA to address challenges.

Thank you for the opportunity to testify today.

[The prepared statement of Ms. Brittain follows:]



**Hearing  
"Oversight of CERCLA Implementation"**

**U.S. House of Representatives  
Committee on Energy and Commerce  
Subcommittee on Environment and the Economy  
July 13, 2016**

**Testimony of  
Amy Brittain  
Remedial Action Focus Group Chair  
Association of State and Territorial Solid Waste Management Officials**

**Main Points:**

- States should be included early when EPA is determining which State environmental regulations are potential Applicable or Relevant and Appropriate Requirements (ARARs). There needs to be transparency and consistency on these decisions.
- Every Superfund site with complex long term remedies, such as ground water remediation systems, should be evaluated for potential remedy optimization before transfer to 100 percent State funding.
- EPA regions should improve management of Superfund State Contracts to ensure better documentation of EPA costs that States have to match and timeliness of final financial reconciliations.

Good morning Chairman Shimkus, Ranking Member Tonko, and Members of the Subcommittee. I thank you for the opportunity to speak at today's hearing. My name is Amy Brittain and I am an Environmental Programs Manager at the Oklahoma Department of Environmental Quality. ODEQ is a member organization of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). I am also the Chair of the Remedial Action Focus Group within the Association's CERCLA and Brownfields Subcommittee, and in this capacity I have been asked to represent ASTSWMO at today's hearing. ASTSWMO is an association representing the waste management and cleanup programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes managers from the State environmental protection programs, including those responsible for overseeing the cleanup of Superfund sites.

States play a key role in the Superfund process, and it is only through working closely with the U.S. Environmental Protection Agency (EPA) that risks to human health and the environment are mitigated and appropriately addressed. Our Association is committed to ensuring that this is done in an efficient, cost effective manner. Additionally, the Association works to address inconsistencies on how the program is implemented from EPA region to region.

An ongoing concern for our State members is the process EPA follows to identify State regulations as potential Applicable or Relevant and Appropriate Requirements (ARARs), as well as State guidance that may be included as to-be-considered (TBC) requirements for Superfund remedial actions. States across the country have raised concerns to EPA including: (1)

inconsistencies in ARAR determination from one site to another, (2) the lack of written documentation on the rationale used to determine ARARs, and (3) the lack of early opportunities for States to have a say in the ARAR list of a site.

Over the past year, EPA has invited representatives from States to participate as members of a workgroup that is developing tools to improve the ARAR identification process that will help ensure meaningful and substantial State involvement. ASTSWMO appreciates EPA inviting representatives from States to participate in this important effort. As a next step, EPA must continue to engage States in the ARARs process discussions, which includes an open direct dialog with States on policy decisions on whether or not a State regulation is an ARAR.

Another growing concern for States is the financial burden that we face with Operation and Maintenance costs on complex long term remedies such as ground water remediation systems. Now that Superfund has reached the 35 year mark, a significant number of sites are complete and States are required to pay 100 percent of the Operation and Maintenance costs. States are working with EPA to find ways to optimize remedies, increase the effectiveness, and/or reduce the cost without sacrificing long-term protection of human health and the environment. EPA has implemented a remedy optimization program to perform systematic site reviews. It is important for EPA to require that these optimizations be performed as early as possible so that cost saving and efficiencies are realized before the financial burden falls entirely to the States.

Over the past 2 years the ASTSWMO Remedial Action Focus Group has been working with States and EPA to evaluate and improve Superfund State Contracts. A Superfund State Contract is a binding agreement between the EPA and an individual State that defines the terms and conditions for both parties to share remedial action costs at a specific site. States have concerns with the lack of detailed line-item documentation on what EPA has spent on site remedies. Too often, States get little information on how the cleanup money was spent by EPA, yet are expected to pay for 10% or 50% of the costs incurred. Another issue is the lack of timeliness for final financial reconciliation of these contracts. Many existing contracts have never been reconciled, therefore States have received invoices for EPA expenses that go back 10 or 20 years or find that EPA over invoiced States and owe the States money. Additionally, States have experienced lack of adherence to the contract requirements by EPA.

With input from States, EPA revised the Superfund State Contract model provisions in late 2015. The new model provisions address several concerns from States including the ability to set up payment plans for State match and providing a timeline for final financial reconciliation of the contract. However, many existing contracts already in place will continue to cause problems for States. It is important that EPA make it a priority to provide detailed cost documentation to States and perform final financial reconciliations on open contracts.

Superfund is a very important program that provides a mechanism for cleaning up properties that pose a threat to human health and the environment. In the nearly 36 years since Congress passed the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) States have worked diligently to develop and implement environmental



regulatory programs to investigate and cleanup hazardous substance releases. State participation in this program is critical to its success; States are important stakeholders because of the financial obligations of match and long term operations and maintenance. As co-regulators, States want to be a real and meaningful partner in this process and will continue to work with EPA to address challenges.

Thank you for this opportunity to offer testimony. I would be pleased to answer any questions you may have.

Mr. SHIMKUS. Thank you very much and we are happy to have you here.

And now I would like to turn to Marianne Horinko, President of the Horinko Group. And for the record, we know that you served in the EPA for many, many years and bring a wealth of experience. We are glad to have you here. You are recognized for 5 minutes.

#### **STATEMENT OF MARIANNE LAMONT HORINKO**

Ms. HORINKO. Thank you, Chairman Shimkus, Ranking Member Tonko, members of the panel. This is an important hearing and I appreciate your raising public attention to this critical environmental program. I will be the first to say, given my years in the program, that it has accomplished a great deal in 35 years—controlled exposure at over 1,400 sites, controlled groundwater migration at over 1,100 sites, and most importantly, leveraged billions of dollars in private party investment, not just responsible parties, but developers, lenders, others who really want to clean up these properties and get them back into productive use.

At the same time, as the chairman said, it is not 1980. Much has changed. And so I am going to recommend both some statutory, programmatic, and policy topics for oversight for the committee.

Statutorily, the number one change is the role of States. As we have said, in 1980, perhaps only New Jersey had a program. Now, virtually every State, and often, many urban cities, such as New York City, have their own cleanup programs. So, capacity has increased enormously and yet, Superfund still acts as though it were in a vacuum. And certainly, there are ways to sort of patchwork solutions but I think a more fundamental reform is needed and that the committee should consider actually providing for a statutory change that will allow for a formal State authorization to run the Superfund program. All of the other Federal cleanup statutes, RCRA, the Underground Tank Program, the Brownfields Program have a delegation for States. The States are up and running; they are very capable. So, I think it is time to contemplate a statutory change to allow States to formally run the Superfund Program.

Secondly, I think it is important to take a hard look at the National Priorities List. Why are we still listing sites today? Shouldn't the RCRA program have prevented operating industries from mismanaging chemicals? I recommend that the Government Accountability Office take a very careful look at the composition of sites coming onto the NPL in the past 5 to 10 years and see are these sites all really Federal programs. Are there State and local programs that can remediate these sites in a more expeditious manner? So, I would take a hard look at the composition of the NPL.

Then I would also the committee to do as it is doing today for some accountability. Why have some of these sites been on the NPL for 30, 35 years? In the early days of the program, it was very easy to put sites on the NPL. People thought, wow, this means a lot of money, so States were listing sites at the rate of 80 to 100 a year. Well, maybe not all those sites would qualify as Superfund sites using today's ranking. So, let's take a hard look at why some of these sites haven't aged out of the system and also ask other accountability questions and sort of get the agency really thinking about deadlines and delivering results.

Programmatic changes—oh, one last statutory change. And that is EPA needs the ability to manage its resources more efficiently. Right now, they are constrained from moving full-time equivalence people from one region to another. The sites are more mature in some regions than other, providing some congressional fix that would allow EPA to manage its resources and deploy them more efficiently would be very helpful.

On the policy side, I think the National Contingency Plan is ripe for overhaul, in terms of removing a lot of the process that bogs it down. If you look at the remedial program and the emergency removal program, which only EPA would create a program that is akin to picking someone up on the street having a heart attack and taking them to the hospital of removal. But it is a program that works. It is very effective. Similarly, the Brownfields Program, very flexible, very effective.

So, let's look at what works and incorporate those changes into the National Contingency Plan so sites can get cleaned up and not get bogged down in miles and miles of paperwork.

The other thing that I would recommend is looking at the Six Sigma or LEAN process. Some of the EPA regions are piloting this in the RCRA Corrective Action Program and it has created a different culture, a culture of accountability, a culture of deadlines, a culture of daily looking at how can we fix things and meet our expectations for our customer, the community. So, take a look at that LEAN process and see how that can be implemented in Superfund.

And lastly, cultural changes. Cultural changes are perhaps the most challenging to implement because it requires people to think differently. Often people don't embrace change but I think we need to try.

So, I recommend the following two cultural evolutions. The first one concerns technology. It has dramatically transformed our lives in many ways and transforming institutional controls is one area where it is taking place now. EPA's Mid-Atlantic Region is piloting a tool that will create a GPS-enabled app that you can use on your smart phone and take anywhere in the country and lat/long a site's property boundaries and then also tell you where is the plume. Is it PCE? Is it dioxin? Is it mercury? Where is it going? What rate of speed is it going? Essentially, this tool could create a whole army of citizen enforcers of the environmental law, which is daunting but also very promising.

So, take a hard look at technology and see how that can help us use our resources.

The other thing I would say is education. EPA has lost many key employees to retirement. It is hiring to make up backlog. These new risk managers need to learn what we have learned in 35 years and how not to repeat the mistakes of the past. So, doing some very robust education, I think, would be much needed.

Lastly, partnerships. I am delighted that the Edison Wildlife Group is here because that represents the kind of partnership that really I think bring promise to the agency. We have learned that we don't have enough time or resources in the public or private sector. So, partnering with NGOs, educational institutions to do things like Region VII is doing where they put a pollinator garden on a former recycling Superfund site I think is very promising.

So, again, I thank the committee for its attention and I commend you all for your leadership and I appreciate your time.  
[The prepared statement of Ms. Horinko follows:]

**Summary of Testimony of Marianne Lamont Horinko**

*July 13<sup>th</sup>, 2016*

*Before the House Energy and Commerce Committee  
Subcommittee on Environment and the Economy*

*Hearing on Oversight of CERCLA Implementation*

- The Superfund statute is now over 35 years old.
- It was designed to address contaminated soil and groundwater challenges and was largely successful in doing so over the years.
- It is time for Congress to update the statute to make it more effective and efficient in addressing the current environmental challenges facing the country.
- We should reexamine the role that States have in implementing the program.
- We should examine the National Priorities List and ensure that Superfund is the right tool to address the issues presented by those sites.
- Superfund is in need of much more flexibility so that regulators can more timely and effectively manage complex cleanups.
- The Agency should look at the success of the LEAN program in RCRA and take the lessons-learned and apply them to Superfund.
- It is important to tailor the future of Superfund in order to take advantage of the significant technological advancements of the last 35 years and update the program accordingly.

**Testimony of Marianne Lamont Horinko**

*July 13<sup>th</sup>, 2016*

*Before the House Energy and Commerce Committee  
Subcommittee on Environment and the Economy*

*Hearing on Oversight of CERCLA Implementation*

**I. Introduction**

Thank you, Chairman Shimkus; ranking member Pallone and distinguished members of the committee. I commend all of you for holding an oversight hearing with respect to this important program. I appreciate the opportunity to engage in the dialogue. It is certainly time for reasoned insight and potential changes to the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) Program.

**II. Backdrop**

CERCLA was enacted by congress in 1980 in response to the threat of hazardous waste sites, such as Love Canal in New York. In the early years of the program, our nation came to understand the scale of the challenge. Since 1980, EPA has taken actions to control potential or actual exposure risk to humans at 1,439 sites. EPA actions have also controlled the migration of contaminated groundwater at 1,138 sites. EPA has obtained billions of dollars in commitments from responsible parties to clean up Superfund sites, including two billion dollars in 2015 alone. Not only has Superfund averted many potential tragedies in communities, but fear of Superfund liability has also dramatically changed corporate social responsibility. Today, private

companies carefully review their management of secondary materials to ensure that future Superfund sites are not inadvertently created.

At the same time, it has been over thirty-five years since the Superfund program was created, and many important aspects of environmental policy have evolved enormously since 1980. Now is an opportune point for this committee to examine this program in the light of today's circumstances.

### **III. Proposed Changes to Superfund**

There are a number of potential changes to the Superfund program that I would propose for consideration. For purposes of today's hearing, I am going to divide them into three categories: Legislative Changes; Programmatic or Policy Changes; and Cultural Changes.

#### *Legislative Changes*

First of all, I would like to recommend several potential statutory amendments to this committee.

The role of the states in implementing Superfund needs to be seriously reexamined, in my view. In 1980, very few states (perhaps except for New Jersey) had robust cleanup programs under their own statutory authority. That situation has evolved toward the present day, where virtually every state has a strong and capable cleanup program. Every other environmental

statute, of which I am aware, has a strong state delegation authority. Examples include the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act. The other federal environmental cleanup statutes and such programs as the Resource Conservation and Recovery Act, the Underground Storage Tank Program, and the Brownfields Act feature a strong state authorization capability. Yet the Superfund cleanup program only features a state review component. It is time to consider authorizing states for all of our federal cleanup capabilities.

Next, I believe that it is time to take a hard look at the National Priorities List (NPL). I would ask the Government Accountability Office to undertake a widespread stakeholder dialogue surrounding the constitution of properties added to the NPL every year and what types of sites are arising by each region of the country. Such a dialogue might consider the types of sites being added to the NPL. Are we adding contaminated watersheds and large mining sites or dry cleaners and auto body shops? We need to decide which sites are most appropriate for management under Superfund. Another relevant inquiry is to better understand the impact the recession had on the Superfund pipeline generally. There has been no cradle to grave review of the NPL since the 2001 report conducted by Resources for the Future. I think if we examine the nature of the properties being added to the NPL today, we could determine whether some of these sites could be more ably handled by the states, or even by communities under the Brownfields Program.



As part of its oversight function, I recommend that Congress require some accountability from the Agency.

Additionally, I would recommend that congressional appropriators provide EPA with much more flexibility in the manner by which Superfund dollars and Full-Time Equivalent (FTE) positions are deployed around the country. Currently, EPA is constrained from mobilizing resources towards different parts of the country even as the depth of the challenges in these regions grows and ebbs. I would recommend that EPA have the flexibility to manage its resources towards the greater environmental challenges it faces. This change is common sense, in my view.

#### *Policy/Programmatic Changes*

From a programmatic perspective, I would recommend that the agency revamp the National Contingency Plan (NCP) to remove many of the procedural elements that cause the remedial process to be so time-consuming. I would recommend the agency look carefully at the Superfund removal program, which is much more efficient and cost-effective. Initially designed to address hazardous material emergencies, the removal program has evolved to become one of the most capable cleanup programs I've ever witnessed. By streamlining the long-term remedial program to become less

process-intensive and more focused on near-term results, Superfund can deliver much more value to the communities it serves.

The second programmatic change I would recommend is implementation of the Six-Sigma or "LEAN" Program. The RCRA Program has enjoyed tremendous success with implementation of the LEAN (now called RCRA First Process) in the corrective action program in EPA Regions 3 and 7. Regions 4, 5, and 10 are eager to embrace RCRA First as well. This effort represents a significant change for EPA and the states in that it imposes deadlines and accountability around managing the cleanup process. The agency, communities, and responsible parties create a desired outcome for the cleanup process. For example, determine a specific number of acres at a site that are ready for reuse by a date certain. In the words of my distinguished colleague, John Paul Woodley (former Assistant Secretary for the U.S. Army Corps of Engineers), "it is time to stop approaching these cleanup sites as if each one were a Swiss watch and time to start approaching them as if we were tuning our Toyotas". After 35 years of experience, we should have a sophisticated understanding of the Superfund process and thus be able to build in efficiencies and reduce the resource-intensity of cleanups.

#### *Cultural Changes*

Cultural changes are perhaps the most challenging to implement. After all, in most large organizations, the perspective that “we’ve always done it this way” is hard to defeat. Nevertheless, I believe that we are doomed if we don’t try. Therefore, I recommend the following two cultural evolutions.

The first recommendation concerns technology in the way that it has transformed our lives and our business processes. Throughout the history of Superfund, we have been vexed by the issue of long-term stewardship. At many Superfund sites where the construction of the cleanup is completed, there remains some type of institutional controls in place. These controls may take the form of engineered barriers, such as a landfill cap or a long-term groundwater pump-and-treat operation. They may also take the form of a land use control, such as a deed restriction or some type of a local or state ordinance limiting the future uses of the property. Historically, the challenge for the EPA has been preserving the integrity of these institutional controls.

While the Superfund law contains a provision requiring EPA to go out in the field and conduct a review of the remedy every five years, that provision doesn’t address the efficacy of the remedy in between those periods. However, as with so many aspects of our lives, new technology is coming to the fore, which contains great promise for addressing these structural inequities. EPA’s mid-Atlantic office has pioneered a new Geographic Information System (GIS) tool, which contains a feature that will map the

parameters of every corrective action site in terms of latitude and longitude. These features are often incorrectly displayed in outdated paper maps. The GIS tool can also map the nature and extent of the contaminant plumes. Any individual with a smartphone can visit a corrective action site, map out the property boundaries, and determine which contaminants are contained in the soil and groundwater, their concentrations, and the extent and direction of the groundwater plumes. This technology has potential to provide for citizen enforcement of the environmental laws – a prospect both thrilling and daunting at the same time.

I recommend that EPA engage the states and local governments in planning how an enforcement program will best utilize the data available from these technological advancements.

The second cultural change that I would implement is robust institutional education. Over 3,000 employees have retired in the past few years from the federal EPA alone. There has been a concomitant wave of retirements at the state and local level. Correspondingly, EPA and the states have been recruiting young people out of colleges, graduate schools, and law schools at a brisk pace. It is incumbent upon all of us that these new hires are equipped with the skill sets; in particular, the risk assessment and risk management tools, to undertake their responsibilities well. Much has been learned after 35 years of experience in implementing the Superfund program. Educating these

young people about the program's successes, as well as the lessons learned over its history, will ensure that the Superfund program capitalizes on its next 35 years.

#### **IV. Partnerships**

The financial crisis of 2008 taught all of us, public and private sector alike, the value of leveraging. Examples of these successful partnerships abound in our environmental programs. The Brownfields Program demonstrates the value of working in collaborative fashion with developers, lenders, and communities to voluntarily investigate and remediate contaminated properties in order to revitalize them to their full economic value. In addition, many stakeholders are developing voluntary programs or incentives to recognize cleanup efforts that go above-and-beyond mere compliance with the Superfund law. The Wildlife Habitat Council has developed a voluntary standard for the creation of conservation projects such as habitat or wetlands beyond that mandated by the natural resources damages law. Also, ASTM International and the Interstate Technology and Regulatory Council have created standards and guides around green and sustainable remediation to make contaminated site cleanups more environmentally, economically, and socially beneficial. Recently, Boeing partnered with EPA Region 7 in Kansas City and the local community to create a pollinator garden at a former recycling site. These cooperative initiatives greatly leverage the federal funding that Superfund

provides and also empower communities, state and local governments, and responsible parties to step up to the plate.

**V. Conclusion**

This oversight hearing is an important opportunity to "reboot" Superfund.

Certainly, any bureaucratic transformation will require space and time.

However, today we have significantly more tools and technology than we did in 1980. Going forward, I am confident that Superfund stakeholders can work together to advance this cause and set Superfund on a positive path forward for the next generation. Thank for again for this opportunity and I look forward to answering any questions.

Mr. SHIMKUS. Thank you. The Chair now recognizes Steven Nadeau, a partner at Honigman. You are recognized for 5 minutes. Your full statement is in the record.

**STATEMENT OF STEVEN C. NADEAU**

Mr. NADEAU. Thank you. Thank you, Chairman Shimkus, Ranking Member Tonko, and members of the committee. Thank you for holding this important oversight hearing on the implementation of CERCLA, commonly known as Superfund.

My name is Steven Nadeau, and I am an environmental attorney with more than 3 decades of experience with potentially responsible parties at complex Superfund sites across the country and I have served as the Coordinating Director for the Sediment Management Working Group since 1998.

I spent years working with industry and the EPA in developing site remedies for complex Superfund sites. I am delighted to be here today to share my experience with

the Superfund program. However, before I do I must say that these views are my own and do not represent the views of any particular client or organization.

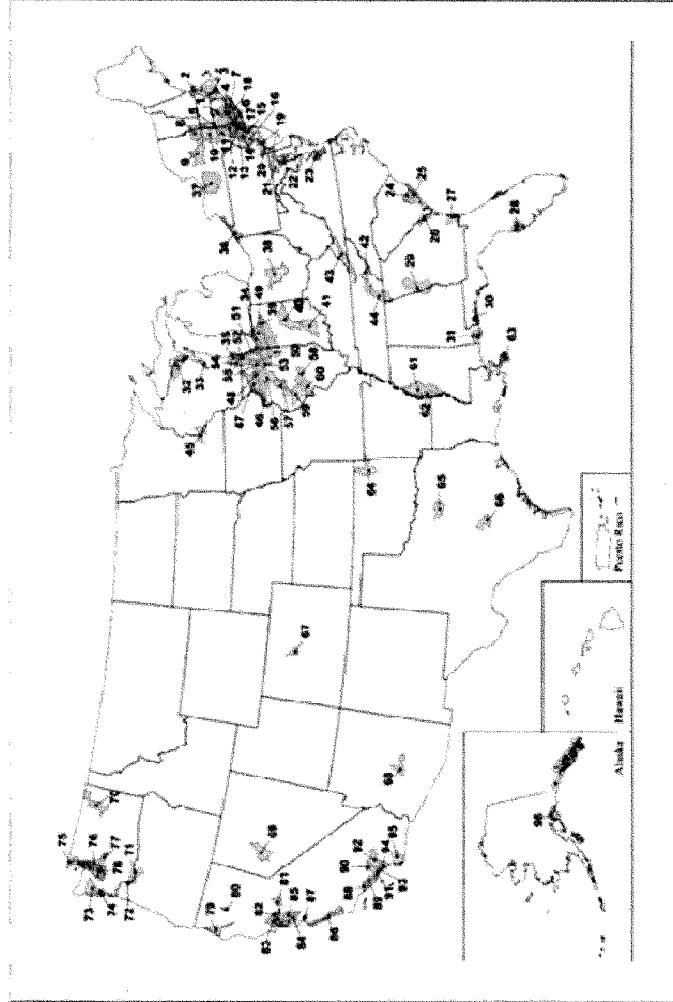
Congress enacted CERCLA in response to a growing desire for the Federal Government to ensure the cleanup of the Nation's most contaminated sites and to protect the public from potential harm. For over 30 years, the EPA has successfully identified and remediated hundreds of Superfund sites, typically old abandoned landfills or industrial properties. However, the typical Superfund profile has changed from those abandoned landfills and industrial properties to complex mining and river sediment sites, often referred to as mega sites. These mega sites are far more complicated, expensive, and time consuming than traditional Superfund sites.

Mega sites, such as those involving former mining areas, where contaminated sediments are widespread and a costly problem for this country. According to the 2004 EPA Office of Inspector General, evaluation of mega sites, hard rock mining sites nationwide have the potential to cost between \$7 billion and \$24 billion. Mining sites present unique challenges to the Superfund Program. Uncertainties about party's liability, their long-term viability and efficiency, and the effectiveness of existing hard rock mining remedies make the challenges insurmountable.

Similarly, contaminated sediments in our Nation's waterways, which are the result of hundreds of years of urban and industrial activity from hundreds and even thousands of sources present unique challenges to the Superfund Program. These sites represent the future of the Superfund Program.

And as you can see in a map, there it is.

Exhibit 1: EPA-identified Watersheds with concern for sediment contamination areas (2004)





The issue of contaminated sediment is not unique to one region. Over a hundred potential sites are listed across the country in that time frame and many more have been added since. These sites present the challenge of addressing the health and environmental impacts of ongoing urban industrial use, rather than cleaning up discrete releases from specific individual entities, as is in the case of the older, traditional Superfund sites.

For example, large-scale contaminated sediment remediation projects on urban rivers, like the Willamette River in Oregon, can often involve dozens of PRPs, cost over a billion dollars, and drag on for decades.

To assist EPA regions and managers in making scientifically sound risk management decisions at these sites, EPA issued two critical policy guidance documents, Principles for Managing Contaminated Sediment Risk at Hazardous Waste Sites and the EPA Sediment Guidance.

The EPA Sediment Guidance was meticulously developed by EPA over a 5-year period and was the subject of internal review, comments from EPA regions and extensive public comments. The substance of the sediment guidance presents a comprehensive technically sound policy roadmap for addressing complexities associated with contaminated sediments. However, as I describe in greater detail in my written testimony, the EPA's disregard of the sediment guidance and the failure to follow the National Contingency Plan's requirements on, for example, short- and long-term effectiveness, implementability and cost-effectiveness, particularly at the regional level, are severely limiting the effectiveness of the Superfund Program at sediment sites, delaying the remediation of impacted sites and delaying the redevelopment of our Nation's waterways.

For example, some EPA regions have ignored the sediment guidance risk reduction focus in its recommendation to use the phased approach and instead favor bank-to-bank dredging remedies at mega sites. This can lead to more harm than good and delay the recovery of the water body for decades due to the releases of contaminants from the sediments themselves during dredging.

The EPA's failure to follow the NCP and the sediment guidance is causing lengthy and costly delays. The failure to adequately characterize and control upstream and adjacent contamination sources, which then can result in recontamination, implementability issues, such as significant challenges associated with rail and highway transport, aging super infrastructure and disposal of millions of cubic yards, significant long-term impacts on communities trying to use a water body when dredging occurs 24 hours a day for decades.

Thank you once again for the opportunity to testify here today. I believe that appropriate application of CERCLA's NCP provisions and the sediment guidance and the recommendations outlined in my written testimony, of which there are seven, will help make remedy selection decisions at the EPA faster, fairer, and more efficient. Implementing these recommendations will help protect human health and the environment, ensure cost-effectiveness, and provide for efficient use of our natural resources and save taxpayer dollars.

I look forward to answering any questions you may have.

[The prepared statement of Mr. Nadeau follows:]

**Testimony of Steven C. Nadeau  
Partner, Environmental Practice Group  
Honigman Miller Schwartz and Cohn LLP  
Hearing on “Oversight of CERCLA Implementation”  
Before the House of Representatives Committee on Energy and Commerce,  
Subcommittee on Environment and the Economy  
July 13, 2016**

**Major Points:**

- For over 30 years, the EPA has successfully identified and treated hundreds of Superfund sites, typically old abandoned landfills or industrial properties. However, the “typical” Superfund site profile has changed from abandoned landfills and industrial properties to complex mining and river sediment sites, often referred to as mega sites. These mega sites are far more complicated, expensive, and time consuming than traditional Superfund sites.
- To assist EPA Regions and Project Managers in making scientifically sound and nationally consistent risk management decisions, EPA issued two critical policy guidance documents: Principles for Managing Contaminated Sediment Risks at Hazardous Waste Sites (OSWER Directive 9285.6-08, 2002) and the comprehensive (170 pages) Contaminated Sediment Remediation Guidance for Hazardous Waste Site, (OSWER 9355.0-85, 2005) (EPA Sediment Guidance or Sediment Guidance).
- The substance of the Sediment Guidance presents a comprehensive, technically sound policy roadmap for addressing complexities associated with contaminated sediment sites. However, the EPA’s recent disregard of NCP regulations and the Sediment Guidance are significantly delaying remediation of impacted sites and the redevelopment of our nation’s waterways.
- Appropriate application of CERCLA’s NCP provisions, the EPA’s Contaminated Sediment Guidance, and the recommendations in my testimony would result in making remedies faster, fairer, and more efficient. Similarly, they would significantly accelerate the redevelopment of Superfund sites located along our nation’s waterways.

Chairman Shimkus, Ranking Member Tonko and Members of the Committee:

Thank you for holding this important oversight hearing on the Comprehensive Environmental Response, Compensation and Liability Act of 1980, otherwise known as CERCLA, or Superfund. My name is Steven Nadeau, and I am an environmental law attorney with more than three decades of experience representing potentially responsible parties (PRPs) at complex superfund sites across the country, including Michigan, Illinois, Indiana, Ohio, New York, New Jersey and the Pacific Northwest. I also serve as the Coordinating Director for the Sediment Management Working Group (SMWG), which is an ad hoc group of Superfund technical practitioners dedicated to ensuring remedial actions at Superfund sites are based on sound science and risk-based solutions.

I am delighted to be here before you today to share my experience with the Superfund program. However, before I do I must say that these views are my own and do not represent the views of any particular client or member of SMWG.

Congress enacted CERCLA in response to a growing desire for the federal government to ensure the cleanup of the nation's most contaminated sites and to protect the public from potential harm.

CERCLA authorizes the cleanup and enforcement actions of federal agencies, such as the Environmental Protection Agency (EPA), to respond to actual or threatened releases of hazardous substances into the environment. CERCLA establishes a broad liability scheme that holds past and current owners and operators of facilities, from which a release occurs, financially responsible for cleanup costs, natural resource damages, and the cost of federal public health

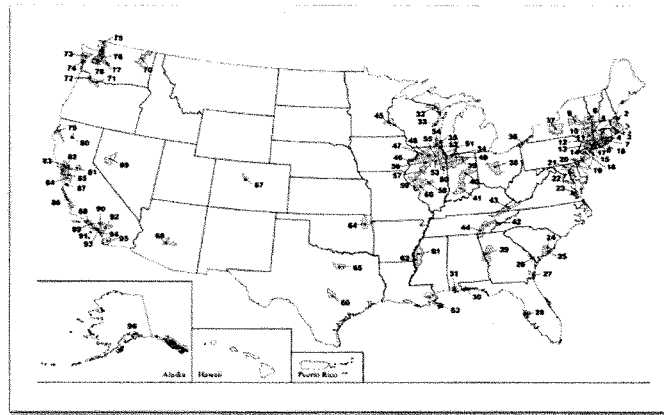
studies. Accordingly, the EPA identifies PRPs for hazardous substances releases to the environment and then either requires them to clean up the sites or undertakes the cleanup on its own using the Superfund trust fund and/or costs recovered from potentially responsible parties. The liability of these PRPs has been interpreted by the courts to be strict, joint and several, and retroactive.

**I- The New Reality of the Superfund Program**

For over 30 years, the EPA has successfully identified and remediated hundreds of Superfund sites, typically old abandoned landfills or industrial properties. However, the "typical" Superfund site profile has changed from abandoned landfills and industrial properties to complex mining and river sediment sites, often referred to as mega sites. These mega sites are far more complicated, expensive, and time consuming than traditional Superfund sites. These mega-sites typically reflect hundreds of years of urban and industrial activity, from hundreds and even thousands of sources – public and private. As such, these sites present the challenge of addressing the environmental impacts of ongoing urban and industrial use, rather than cleaning up discreet releases from individual entities.

For example, large-scale, contaminated sediment remediation projects on urban rivers, like the Willamette River, can often include dozens of PRPs, cost over \$1 billion dollars, and drag on for decades. Contaminated sediment is a widespread and costly problem in the United States. Its wide distribution results from the propensity of many contaminants that migrate or are discharged to surface waters to accumulate in sediment or in suspended solids that later settle. Furthermore, contaminants can persist in sediment over long periods if they do not degrade (i.e.

metals) or if they degrade very slowly. The map below shows EPA-identified watersheds as of 2004 containing areas of concern for sediment contamination.



**Figure 1: Source: Environmental Protection Agency - National Sediment Quality Survey, 2nd Edition (2004)**

To put costs in perspective, in 1998, in a limited survey of the problem, EPA estimated that 1.2 billion cubic yards of sediment is contaminated nationwide. Assuming dredging is required, the total cost, using a conservative \$250 per yard for dredging, would be a staggering \$300 billion. Since then, scores of additional contaminated sediment sites have been identified.

From a regulatory standpoint, contaminated sediments and mining sites are challenging to manage. There is a limited range of remedial techniques that one can employ for managing contaminated sediments, including dredging; application of in-situ amendments to bind up contaminants; capping or covering contaminated sediments with clean material; and relying on natural processes to reduce risk, while monitoring the site to ensure that contaminant exposures are decreasing or stable. Each approach differs in complexity and cost. Dredging typically is the

most complex and expensive, and monitored natural recovery is the least intrusive and least expensive. In addition, each remedial action has certain trade-offs between the short-term and long-term risks that are created during implementation and the anticipated risk reduction from the remedy.

To assist EPA Regions and Project Managers in making scientifically sound and nationally consistent risk management decisions, EPA issued two critical policy guidance documents: Principles for Managing Contaminated Sediment Risks at Hazardous Waste Sites (OSWER Directive 9285.6-08, 2002) and the comprehensive (170 pages) Contaminated Sediment Remediation Guidance for Hazardous Waste Site, (OSWER 9355.0-85, 2005) (EPA Sediment Guidance or Sediment Guidance). The EPA Sediment Guidance was meticulously developed by EPA over a five-year period and was the subject of internal review, comment from EPA's Regions, and extensive public comments.

The substance of the Sediment Guidance presents a comprehensive, technically sound policy roadmap for addressing complexities associated with contaminated sediment sites. However, as I describe below, the EPA's recent application of the Sediment Guidance has severely limited the effectiveness of the Superfund program at sediment sites. In fact, the failure to follow the NCP and the Sediment Guidance often has devastating and long lasting impacts on local communities and their citizens. For example, risks to human health and the environment posed by contaminated sediments are ongoing during delays of ten to twenty years or more in order to complete studies deemed necessary due to an aversion of decision-making in the face of some uncertainty. Similar lengthy delays often occur beyond the study phase if large scale dredging remedies are implemented over a decade or more. Lengthy removal remedies often

result in disruption of commercial and recreational use of the waterway for many years and preclude redevelopment along the waterbody.

## **II- Typical Issues and Challenges at Contaminated Sediment Sites**

Despite the existence of a sound national contaminated sediment policy (as embodied in the EPA Sediment Guidance), the current EPA Superfund program is not functioning properly at mega sites. For example, at contaminated sediment sites, the Sediment Guidance and the remedy selection criteria within the National Contingency Plan (NCP) regulation are being disregarded by the EPA Regions at many sediment sites, particularly where it is needed the most—at mega sediment sites (with projected costs greater than \$50 million, with several exceeding \$1 billion dollars)<sup>1</sup>. This disregard of NCP regulations and the Sediment Guidance are significantly delaying the remediation of impacted sites and the redevelopment of our nation's waterways.

The complexity of large contaminated sediment sites is unparalleled in the Superfund program because these sites are so large, often consisting of ten to thirty river miles or large lakes or harbors associated with expansive watersheds. These large sediment sites frequently involve comingled contaminants from multiple sources, which may result in impacts to human

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<sup>1</sup>The magnitude of these sediment sites is extraordinary: Lower Willamette River, Portland OR –the proposed remedy is estimated by the Region to cost close to \$1 billion, although many experts believe the actual cost will run well over \$1.6 billion; Lower Passaic River, NJ - \$1.7 billion; Lower Duwamish, Seattle WA – \$395 million; Gowanus Canal, NY – \$560 million; and the Fox River, WI –originally estimated to cost \$390 million, but costs now are projected to exceed \$1 billion.

Mining sites frequently traverse rivers and creeks for dozens of miles, often involving small, rocky creeks that are virtually impossible to completely address. Mine tailings have spread over thousands of acres, and acid mine drainage (AMD) that is expected to continue for thousands of years. In 2004, the EPA Inspector General estimated that 63 mining sites would collectively cost up to \$7.8 billion to clean up (or more than \$120 million per site on average), with almost one-third of those costs borne by taxpayers. (See EPA OIG, Nationwide Identification of Hardrock Mining Sites, 2004-P-00005, March 31, 2004). Examples include: Coeur d'Alene Basin ROD Amendment (August 2012) (estimated cost of \$635 million over 10 years) and Iron Mountain Mine (a \$950 million settlement was agreed to by Aventis in 2000 to address AMD and other cleanup costs; the AMD remedy has been funded to run "in perpetuity" because the mine is expected to continue to produce AMD for 2,500 to 3,500 years).

health via fish consumption, but sources of risk are not easily identified and are often difficult to quantify.

These difficult and unpredictable factors have led to numerous issues and challenges at contaminated sediment sites, many of which are described below.

- **Source control, especially at large urban rivers**

At some sites, as noted above, EPA is selecting multi-mile, multi-million yard sediment remedies without adopting measures to reasonably control continuing contamination sources before implementing those remedies, which is required by the Sediment Guidance. The failure to adequately characterize and control upstream and adjacent sources can result in remedies that are almost certain to be recontaminated, often shortly after remedy completion, especially in large urban rivers.

- Example: Gowanus Canal (NY) – The Record of Decision (ROD) fails to address municipal storm water outfalls that contribute hundreds of millions of gallons of contaminated roadway water, which is known to be a significant source of pollution. This leaves the waterway completely vulnerable to recontamination and failure after completion of the remedy at a cost of more than \$550 million.

- **Lengthy and costly studies, spurred by ultra-conservatism and the fear of proceeding in the face of uncertainty, despite the availability of sufficient information to make sound decisions**

The length of the RI/FS phase at large contaminated sediment sites is running ten to twenty years with investigation and administrative costs running over \$150 million with little to no risks areas being addressed. Such delays are spurred on by regulatory conservatism and an emphasis on dredging, even where it is not cost-effective or necessary based on the best available science.



As a result, appropriate risk management is delayed, community-based redevelopment of waterfronts is impaired, and resources that could be used to implement a cleanup are instead spent on unnecessary and unproductive studies.

- Example: Willamette River (OR) RI/FS – 15 years duration and a cost of over \$100 million

- **EPA's reliance on "mass removal"--disregarding the Sediment Guidance's strong emphasis on risk reduction**

EPA's unrealistic risk scenarios and failure to apply the sediment guidance has led to overly conservative remedies that focus on "mass removal," which often results in significant release of contaminants from the sediment into the water. Sediment sites differ significantly from traditional upland CERCLA sites in that more intrusive remedies (i.e., dredging) can substantially increase the risk of harm to human health and the environment. Despite the use of Best Management Practices, resuspension and release of contaminants during dredging is inevitable and unavoidable. This can cause short term and long term adverse impacts to the waterbody and fish, such as elevating fish tissue concentrations significantly compared to pre-dredging conditions or compared to remedies with less reliance on mass removal. Ignoring these impacts of construction and fish recovery deprives communities of the use of their natural resources.

- Example: Commencement Bay (WA) – After two major dredging projects were completed, concentrations of PCBs in fish tissue are still higher than they were over twenty years ago before dredging began (38 ppb before and 70 ppb after).
- Example: Lower Duwamish River (WA) – Remedial alternatives 3 through 6 of the Feasibility Study would have all achieved approximately the same level of long-term

risk reduction, yet Region 10 selected a remedy that required 460,000 cy of additional dredging (a 94% increase) and added four additional years of dredging/construction time. This will inevitably result in a substantial release of contaminants to the river during the Region's estimated seven years of dredging.

- **Disregard and disrespect of the recommendations of NRRB/CSTAG and lack of senior HQ support for NRRB/CSTAG's recommendations**

EPA established the Contaminated Sediments Technical Advisory Group (CSTAG) as a panel of 18 experts in the field of sediment remediation drawn from each EPA Region, Headquarters, and EPA's Office of Research and Development to provide expert advice and foster consistency with the NCP and the EPA Sediment Guidance, including the critical remedy selection decision. The role of CSTAG's experts was greatly diminished in 2011 when CSTAG's review was combined with the previously separate National Remedy Review Board (NRRB) review.<sup>2</sup> EPA's Regions frequently disregard the recommendations of NRRB/CSTAG because the review is considered advisory and non-binding. Of equal significance is that, based on the current EPA decision-making process, senior EPA Headquarters management is not responsible for the remedy selection decision at mega-sediment sites and is not providing support for CSTAG/NRRB's recommendations when they are ignored.

- Example: Gowanus Canal (NY) – NRRB/CSTAG recommended that the Region evaluate several specifically listed alternatives that could reduce the amount of

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<sup>2</sup> In the combined NRRB/CSTAG review, CSTAG's role has been greatly diminished, with only two or three CSTAG representatives (instead of the full panel of 18 experts) listening in on the NRRB deliberations. This well-intended streamlining significantly diluted and changed the nature of the internal EPA peer review, because the CSTAG's members consist of some of the leading U.S. EPA sediment experts, whereas the NRRB members typically are senior Regional Superfund Program Managers, normally not schooled in complex sediment issues. Notwithstanding their diminished nature, the combined NRRB/CSTAG reviews have recognized and commented on many of the same Regions' inconsistencies with the NCP and Sediment Guidance noted in this memorandum and have made specific recommendations to the Regions to correct those inconsistencies, many of which have been ignored by the Regions without consequences.

dredging based on what CSTAG saw as the “expected limited effectiveness of dredging.” However, the Region’s Feasibility Study failed to consider CSTAG’s recommended alternatives.

- Example: Lower Passaic (NJ) – In its 2014 review of Region 2’s Proposed Plan, CSTAG/NRRB noted remedial goals fell below background levels, but the Region’s Proposed Plan and eventually the ROD still included remedial goals that were below anthropogenic background. NRRB/CSTAG also recommended that the Region address the potential for recontamination after the proposed remedy was implemented for the Lower Passaic River, yet the final Conceptual Site Model issued by the Region did not adequately account for ongoing sources and the potential for sediment recontamination.

- **Selection of cleanup standards that are unachievable**

While the CERCLA program focuses on contamination caused by local releases into the environment, some contaminants in water and sediment can be naturally occurring or the result of ongoing human-caused sources. Some contaminants, such as mercury, are transported atmospherically before being deposited on soil or in waterbodies. Under both CERCLA and the Sediment Guidance, cleanup standards are not to be established below anthropogenic background concentrations. “Anthropogenic background” refers to the level of contaminants that is present as a result of human sources (not specifically related to the contaminated site in question) and causes sediments not to recover to the levels below those numbers. Despite this policy, which recognizes the reality of other sources that will prevent achieving remedial goals, some EPA Regions’ decisions inappropriately require cleanups that are impossible to achieve because they set remedial goals below anthropogenic background.

- Example: Lower Duwamish (WA) – The 2014 ROD inappropriately requires remedial goals to achieve natural background levels, which are not achievable due to anthropogenic conditions.
- Example: Lower Passaic River (NJ) – EPA selected remediation goals that are 1/10<sup>th</sup> of background levels for mercury and PCBs.
- **Selecting Remedies that Inappropriately Attempt to Address Every Possible Issue Up Front, Causing Substantial Delays in Remediation and Driving Away Parties Which Otherwise Would Step Up to Implement such remedies**

At many mega sediment sites, remedies are consistently being selected by the EPA under the Superfund Program that unrealistically and inappropriately attempt to address all site risks in one comprehensive, ultraconservative ROD. This often results in a release of contaminants that inevitably occur during dredging. Such RODs actually counter-productively stall remediation and drive away responsible parties who would otherwise be willing to implement appropriately phased remedies at mega sediment sites.

The Superfund Program has existing tools that could easily solve this problem: 1) Operable Units (dividing the site into areas or phases within a ROD or RODs), 2) Adaptive Management tools (that are designed to implement specific, focused remedies and then monitor the results and effectiveness before proceeding with additional remedial measures if necessary), and 3) Phasing remedy implementation to accomplish the same purpose as Adaptive Management.

These Superfund techniques have been successful at many large upland Superfund sites for years and the Sediment Guidance also recognizes that a phased approach “may be the best or only option” at complex sites and also specifically encourages the use an adaptive management approach. By utilizing these methods, mega sediment sites will be addressed faster, fairer, more effectively, and encourage responsible parties to undertake these important cleanups.

- **Implementability Issues**

EPA routinely fails to adequately consider the implementability of its remedies, as required by the NCP. Sediment remedy implementability issues often overlooked by EPA include: (i) the significant challenges associated with rail and highway transport of millions of cubic yards of dredged materials (as well as millions of cubic yards of capping and cover material); (ii) the difficulties of not accounting for the reliance on old infrastructure; (iii) the increase in barge traffic needed to transport dredged sediments and capping material; (iv) the consequences of disruption to communities' overall quality of life; (v) the significant long-term impact on commercial and recreational vessels trying to use a waterbody when dredging will continue 24 hours/day for decades; (vi) the impacting presence of hundreds of underwater utilities and obstructions; and (vii) the difficulty in finding adequate and community-acceptable locations for long term, large scale activities. These issues, among many other similar logistical issues, are frequently ignored in the remedy selection process and are inappropriately deferred to the design phase.

- Example: Lower Passaic River (NJ) – The River Mile 10.9 2013-14 Interim Removal Action involved a relatively small dredging project in a heavily urbanized area of the NY/NJ metropolitan area containing numerous 100-year plus old swing and draw bridges. One of these bridges broke in the open position during the dredging, and replacement parts had to be hand-fabricated, resulting in substantial delays. EPA failed to consider the actual experience from the RM 10.9 removal and approved a remedy of about ten times the scope of RM 10.9 for the Lower Passaic River in the March, 2016 ROD without adequate consideration to the impact on bridges and other transportation infrastructure.

- **Disregard of the cost-effectiveness test set forth in CERCLA, the NCP, and the Sediment Guidance**

EPA routinely rejects remedies that provide equivalent risk reduction at lower costs in favor of more costly remedies that focus on excavating more soil but do not significantly reduce risk. This emphasis on excavation over risk reduction is inconsistent with the Sediment Guidance. Moreover, failure to consider cost-effectiveness is a major violation of CERCLA, the NCP, and the EPA Sediment Guidance. Under the NCP and the Sediment Guidance, remedies must have “costs [must be] proportional to the overall remedial effectiveness.” This concept was further explained in the *Federal Register* preamble to the NCP, which states that “if the difference in effectiveness is small but the difference in cost is very large, a proportional relationship between the alternatives does not exist.”<sup>3</sup>

- Example: Lower Duwamish (WA) – Region 10’s 2014 ROD selected an alternative (5C modified) that will cost at least \$142 million more (representing a 71% increase) than the alternative with a comparable level of protectiveness.
- Example: Lower Passaic (NJ) – Region 2’s cost-effectiveness “analysis” for a \$1.4 billion remedy consists of six sentences, provides no details as to how cost-effectiveness or proportionality were determined, and fails to address how the cost-effectiveness of the selected remedy was compared to other alternatives, as required by the NCP.

- **EPA Does Not Require All PRPs to Participate in Remedies**

EPA Guidance calls upon the Agency to involve all potential responsible parties in cleanup sites. The parties to be involved include public entities such as municipalities, public utilities,

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<sup>3</sup> 55 Fed. Reg. 8728 (March 8, 1990).

and state and federal agencies. However, EPA does not consistently apply this Guidance and routinely fails to involve all of the parties responsible for a cleanup, leaving the burden to those entities EPA chooses to include. In particular, EPA does not consistently involve public entities in sediment site cleanups, which are in a unique position to contribute to remedies at sediment sites. Local governments can play an indispensable role in addressing off-river sources of recontamination and advocating for cost-effective remedies. Additionally, local governments are also more likely to be sensitive to the implementability of sediment remedies, as well as the impact of remedies on quality of life issues such as odor control, local traffic conditions, and coordinating economic development with environmental restoration.

- Example: Lower Passaic River (NJ) – EPA did not identify any public entities as responsible parties until after the remedy was selected, despite the fact that controlling ongoing municipal discharges (CSOs) are a critical part of the success of any remedy selected in order to avoid recontamination.

- **EPA has failed to follow its Guidance and procedures governing PRP-lead RI/FS Work**

At least two recent Regional decisions have disregarded the long-standing Superfund process applicable to PRP-lead RI/FS sites. This constitutes an unprecedented violation of the letter and spirit of EPA's Superfund RI/FS Guidance. This significant departure from EPA Superfund protocol should not have been permitted at the senior EPA Regional level or by EPA Headquarters.

- Example: Lower Willamette (OR) - In January 2016, at the Willamette River (Portland Harbor) site, Region 10 unilaterally decided to inform the PRP Group, which had fully implemented all work for over 15 years on the RI/FS (including human health and ecological risk assessments) and had spent in excess of \$100 million on that work, that it was rescinding the delegation of the PRP-lead status for the FS.

- o Example: Lower Passaic (NJ) – In 2014, at the Lower Passaic River site, Region 2 decided to revise and re-issue an EPA-lead Focused Feasibility Study that covered only the lower eight miles of the site study area. The PRP-lead RI/FS, comprehensively covering the entire 17 mile study area, had been in the works for over 10 years, at a cost of over \$150 million. The PRP Group's work had been performed under extensive oversight of Region 2, consistent with Superfund RI/FS Guidance. This March 2016 action by EPA preempted the extensive PRP RI/FS work, which covers the full 17 mile study area not just the lower eight miles targeted by EPA's interim action.

### **III – Solutions**

Based on my extensive work at sediment sites across the country and the issues outlined above, I respectfully request you consider the following recommendations to improve remedy selection decisions at the EPA. Implementing these recommendations will protect human health and the environment, aid cost effectiveness, provide for efficient use of natural resources, and save taxpayer dollars.

1. EPA Headquarters should strictly require Regions to adhere to CERCLA, the NCP, and the Sediment Guidance at the site investigation, remedy evaluation, and remedy selection stages at all contaminated sediment sites.
2. Senior EPA Headquarters staff should be responsible for approving sediment remedy decisions over \$50 million after review and evaluation of the Region's proposed remedy by the NRRB and CSTAG. Congress should require that all Superfund remedies over \$50 million be approved by the EPA Administrator.



3. The remedy-selection recommendations by the NRRB and CSTAG should be incorporated into the Agency's formal decision process, rather than their current status as a completely non-binding (and largely ignored) internal agency peer review. NRRB/CSTAG remedy decisions should be binding subject to rebuttal by the Region handling the site.
4. The pre-2011 CSTAG and NRRB process involving a comprehensive review of mega sediment sites by the full CSTAG should be restored to permit the Agency's leading subject-matter sediment experts around the country to provide detailed review and comment on the consistency of Regional Proposed Plans with the NCP and the Sediment Guidance.
5. Well-established Superfund processes such as Operable Units, Adaptive Management, or Phased Remedies should be utilized at sediment mega sites rather than attempting to address virtually all site issues, large and small, up front in one massive, ultraconservative removal remedy. This will accelerate cleanups and reduce the risk that remedy implementation itself will cause more harm than good.
6. Every ROD should comply with the cost-effectiveness requirement of the NCP by including a detailed and transparent analysis demonstrating the "proportionality" between the anticipated risk reduction of each remedial alternative and the incremental cost of such alternative. This will force the Regions to actually conduct a detailed evaluation of the proportionality cost-effectiveness requirement

of the NCP rather than simply stating the remedy is cost-effective, which is the current, unacceptable practice.

7. EPA Headquarters should be required to engage in effective oversight of Regions to ensure that Regions are following EPA Guidance on involving public entities in sediment clean-ups.

Appropriate application of CERCLA's NCP provisions, the EPA's Contaminated Sediment Guidance, and these recommendations would result in making remedies faster, fairer, and more efficient. Similarly, they would significantly accelerate the redevelopment of Superfund sites located along our nation's waterways. Again, I want to thank the committee for holding this important hearing, and I look forward to answering your questions.

Mr. SHIMKUS. Thank you very much.

And finally, last but not least, Robert Spiegel, Executive Director of the Edison Wetlands Association. Again, you are recognized for 5 minutes. Your full statement is in the record.

#### STATEMENT OF ROBERT SPIEGEL

Mr. SPIEGEL. Sure. And unlike the rest of the speakers here, I am not going to try to get my 5 minutes and speak everything I have on my testimony because it is entered into the record. I want to really just go over a few things, based on what I have heard as well as what other people have said.

My name is Bob Spiegel. I am the executive director of a non-profit called the Edison Wetlands Association. And, unlike many of the people that have spoken here, actually I am not a lawyer. I am not an environmental engineer. What I started out as was a pastry chef. I went to school for cooking, and I ended up taking a shortcut, or I should say a long cut, when I saw the condition of the environment in New Jersey and when I saw just how bad things had gotten in our State. New Jersey has got the distinction of having the highest population density. It also has got the highest cancer rate: 1 in 3 in the State, and that is something that is unacceptable.

And many of the people that spoke earlier talked about illness in communities throughout the State. And it just appears to me that you shouldn't have to die, your family shouldn't have to get sick just because you picked the wrong ZIP Code to live in. And I think that it is beholden up this committee and also all our elected representatives, both in the House and the Senate and our President to reauthorize Superfund so that we have the funds needed to clean these sites up once and for all.

We work with communities all throughout New Jersey. We work with the Ramapough Lunaape, who were featured in an HBO documentary, *Mann v. Ford*. We have worked with communities large and small. And one of the things that we saw was when there was a robust Superfund program, the cleanups got done. They got done quickly. They were done comprehensively.

As a matter of fact, we got the last check from the Superfund Trust Fund to clean up the chemical insecticide Superfund site. It was a site that had green rabbits on it as a result of the chemicals. And Congressman Pallone had been to the site many times and met some of the people that lived around the site. It was next to a roll bakery that made rolls for McDonald's in the Tri-State area. And I went and testified for the widows of those people that worked at the roll bakery.

And because of the amount of attention, we were able to actually get a lot of media attention. And Molly Ivins actually put a chapter in her book, *Bushwhacked* dedicated to the green rabbits and the yellow streams. Low and behold, Christy Whitman shows up with an oversized novelty check and the site now is clean.

It cost almost \$50 million and now the site is actually a dog park. We actually used Green Acres money, the first time in the State of New Jersey, and bought the property and converted it into a dog park and now it is a community asset. It is something that brings the community together; something that once made Agent Orange and other defoliants that killed servicemen in Vietnam is

now a clean community asset. Why? Because we had money in the Superfund Trust Fund.

The polluters that caused this problem need to be the ones that pay for it. Now, there is other recommendations that I could talk about that would make the program better, like using the removal program and the remedial program, which I think Ms. Horinko had talked about, and we call it "remove-ial." It is kind of a hybrid using the removal program to fast track the cleanup investigation work which was done at Raritan Bay Slag and get it up to the point where the cleanup work can start.

So, I would echo that recommendation that you look at the removal program and the remedial program closer and let them do the work that they do well and then, that way, we could expedite cleanups.

Another thing that we want to see is there could be more available funding, if only the EPA and the legislators would pierce the corporate veil of the companies that are responsible for this pollution. More times than not, we see companies like Ford Motor Company, and Pfizer, and companies that have the wherewithal to lobby make decisions that get done in Washington that affect the cleanups. They get lower cleanup standards. The cleanups are delayed. And as a result, children get sick and die.

One of the last things I just wanted to talk about is that when you look at the original—oh, the one thing that we didn't talk about was the fact that principle threat waste is a major component and it used to be of all Superfund cleanups. They used to have cleanups that used to deal with principal threat waste, which meant they took out the highest threat at a site and then sometimes the site would be capped, if they couldn't get all the waste out, but the major threats were removed. That is no longer done.

Principal threat waste removal at sites is done less and less frequently and I would like to see that trend reversed and the only way to do that is with proper funding.

Just one quick comment. Congressman Eckhardt, during 1979, at his waste disposal hearings, in the survey, in the final report, show that the chemical industry used our entire country as their own private chemical dump. And there was no town that was exempt from industry's practices. And the Superfund sites that they created are listed in that report. You can look at them. In every town in every State in the United States in that final report that was done in 1979, it lists every single State and every single community was a dumping ground. And that is why we have so many Superfund sites today because no one ever thought the magnitude of the problem that existed actually turned out to be the case.

Thank you for letting me come and testify. And I am here to answer questions you may have.

[The prepared statement of Mr. Siegel follows:]

Committee on Energy and Commerce

U.S House of Representative

Wednesday July 13, 2016

Committee on Energy and Commerce, Testimony of Robert Spiegel, Executive Director, Edison Wetlands Association. Good morning, my name is Robert Spiegel. I am the executive director and co-founder of the Edison Wetlands Association also known as the EWA.

Thank you for allowing me to testify today on an extremely important issue, one that deeply impacts public health and environmental quality for all Americans, Superfund Site Cleanups and the reinstitution of the "Polluter Pays" Fees. The EWA is a non-profit environmental organization that was founded in 1989 to protect public health and the environment by cleaning up and restoring hazardous waste sites in New Jersey and beyond.

The EWA also owns and operates the last farm in Edison Township, the Triple C Ranch and Nature Center, a natural oasis in the 1450 acre Dismal Swamp Conservation Area. At the Triple C Ranch and Nature Center, our staff, volunteers and interns run community gardens, and teach hands on environmental programs. The EWA has over 1000 members in New Jersey. The EWA has also been working directly with communities throughout New Jersey and beyond on the cleanup of Superfund Sites for over 25 years. The EWA also works to strengthen the public's understanding of the Superfund process.

The EWA accomplishes this by working directly to chair or co-chair at least 12 Community Advisory Group's (CAG's) with the public, elected officials, the USEPA and other state and federal agencies. We assist communities with guidance and technical advisors to disseminate technical information to communities so they can meaningfully participate in the Superfund Process. The EWA strongly advocates for protective remediation at Superfund Sites, laws and regulations.

I co-founded the Edison Wetlands Association when I was working as a pastry chef in a catering banquet hall. The hall's ice carver John Shersick came into my bakery because he liked the smell of the baked goods I made. Besides being an ice carver John was a naturalist and hunter and one day he asked me a very strange question, "Do you want to see some green rabbits?" At the time, I baked elaborate cakes and taught martial arts, took care of my family, and pretty much minded my own business, which is a pretty hard thing to do in New Jersey when it comes to the environment. A few days later I followed the ice carver onto the Chemical Insecticide Superfund Site on Whitman Avenue, Edison NJ, and the place reeked of death, decay and rot. There were homeless people living on the site, children playing there, and people scavenging wood for building their decks.

Those people didn't know that this was the Chemical Insecticide Superfund site a former pesticide manufacturer that made among other chemicals, the defoliant used in the Vietnam War, the infamous Agent Orange. There were green rabbits on the site that day made green due to a chemical called Dinoseb. I later found out that green ooze was running down into the parking lot where workers made rolls for all the McDonald's

bakeries throughout the Tri-State area. Many of those workers died of cancer and other illnesses.

Our advocacy got the attention of those outside our community and the late best selling author Molly Ivins featured our story in her best seller Bushwhacked. After many years of advocacy and hard work we convinced Former USEPA Administrator Christie Whitman to give us the very last of the Superfund trust fund. USEPA Administrator Christie Whitman delivered the funds in an over size novelty check to start the cleanup work herself.

It was a bittersweet victory because we knew this was the last Superfund Site that would ever get this level of cleanup. Thanks to the Superfund trust fund we were able to get the site fully clean and this site was the first Superfund Site in New Jersey to be purchased and preserved with Green Acres open-space money. The EWA even contributed \$500,000.00 from our New Jersey Green Acres open space funding to purchase this site for parkland. This once Agent Orange Manufacturing Plant is now a Dog Park and community asset.

The EWA also assists environmental justice wealth challenged communities by helping them navigate the often-confusing Superfund process. One of the current short falls with this process is once the USEPA identifies Environmental Justice Communities like the Ringwood Mines Superfund Site and the Ramapough-Lennape Native American Nation as an environmental justice community, there is no follow up or action plan to address the injustices identified by the USEPA. If the USEPA Superfund fees were reinstated

funding could be used to develop action plans to help the wealth challenged communities with development and implementation of a plan to address environmental injustices when they are identified. The case with the Ramapough-Lennape Indian Nation and the wholesale poisoning of their ancestral lands by Ford Motor Company is a very sad but all to common issue in New Jersey and country.

I am here to discuss the funding shortfalls for the USEPA Superfund Program for “Orphan Sites”. “Orphan sites” are sites where there is no responsible party or the responsible party does not have adequate resources to conduct the cleanup. The lack of funding does not just affect sites where there is no responsible parties, it also affects sites where there is a viable party as more and more these parties know the USEPA does not have the ability to clean up the site. The so called “Treble Damages” where the USEPA could clean up a site and then bill the polluter for three times the cost was a very effective carrot and stick for getting “Responsible Parties” to cleanup their sites.

Without a dedicated trust fund, these Superfund Sites continue to discharge highly toxic chemicals into drinking water, streams, rivers including our homes, parks and schools. Any objective observer can see why New Jersey is the poster child for why we need to reauthorize the modest “Polluter Pays” fees and where the EPA’s mission could not be more apparent or necessary. The federal government is failing the American people and we cannot delegate any programs to the states, especially cleaning up leaking hazardous waste sites.



**I challenge this committee to ask the United States Environmental Protection Agency "How many sites does the USEPA have where unacceptable human exposure to contamination is not under control?"**

For many decades we have been trying to get an answer to this most basic question so we can better understand the how many communities are still being exposed to cancer causing chemicals at unacceptable levels?

Congressman Eckhardt's 1979 Waste Disposal Hearings, Survey and final Report show that the chemical industry used the entire United States as its own private chemical dump with no town or city being exempt from industries practices. It's only fair they contribute the modest fees asked to cleanup the national toxic waste nightmare they created. The Superfund Sites that I'm going to talk about in my testimony are just a few of the many examples that continue to poison New Jersey families and communities throughout our nation. It is clear the USEPA's mission and the legislators who first help draft the Superfund Bill in 1980 never anticipated the magnitude of the problems left behind by many of the nations industrial powerhouses especially in New Jersey's Garden State.

Sites like Ringwood Mines Superfund Site, Pompton Lake DuPont Works Site, the Lees Lane Landfill in Louisville KY, and Cornell-Dubilier Superfund Site are actively poisoning large geographic areas including the drinking water for more than 2 million people. I would invite any member of this committee or Superfund detractors to come to

these communities and see first hand the illnesses and hardships that results when these Superfund Sites area left to leak there poisons unabated killing children and destroying American families and our shared environment.

When the modest fees were collected from 1980 until 1995 the leaking toxic waste slop pits were being cleaned up. When the fund finally ran out cleanups slowed down, were much less protective and public health suffered as a result. These fees collected for the Superfund Trust fund were certainly modest by any objective observer and we need rethink about our priorities and reauthorize these fees on those industries that caused these problems, instead of requiring the American people to pay the costs.

The USEPA depleted Trust fund has led to lack of funding, manpower and resources in New Jersey and across the country. Poisoned American towns and cities have an emergency situation with body counts piling up and there is no dedicated funding for all the Superfund cleanup work desperately needed. The USEPA's priority for those who get cleanup funding is now a race to count the bodies of children and adults at Superfund sites around the country. Only the communities with the highest body count get scarce Superfund dollars allocated by the federal government for the USEPA Superfund Program.

In my opinion, based on over 25 years of experience with the Superfund toxic waste program, the failure to have a well-funded USEPA with a dedicated trust fund for the

thousands of leaking Superfund Sites is the real and direct threat to America's national security.

We also cannot talk about the Superfund Program without discussing the communities directly impacted by those sites. New Jersey's rich industrial legacy is both a blessing and a curse for New Jersey families. New Jersey's industries helped make the nation a powerhouse. This included manufacturing bricks and steel that built the nation's skyscrapers and bridges. It also included the development of synthetic chemicals that were a break through and thought to have had a net environmental benefit by replacing things like whale oil and animal based products thus saving the lives of thousands of animals. New Jersey led the nation in innovation from industries such as the automobile to the development of the pharmaceutical and biotech industries. This legacy also left behind a sinister dark side partly due to industries poor housekeeping practices along with organized crimes involvement in the waste disposal industry. New Jersey has more than 114 USEPA Superfund Sites the most in the nation.

New Jersey also has approximately 25,000 known contaminated sites including Department of Defense and Department of Energy Sites. New Jersey has the distinction of having the highest population density as well as the highest cancer rates (1 in 3 people) in the country.

This problem is compounded by the failure of New Jersey's Department of Environmental Protection (NJDEP) to provide any meaningful oversight on the

remediation of the states 25,000 contaminated sites, letting the polluters self-regulate. Without a dedicated trust fund, these Superfund Sites continue to discharge highly toxic chemicals into drinking water, streams, rivers including homes, parks and schools.

The following Superfund and USEPA Regulated Sites are included in my written testimony because they still directly impact human health and the environment. I want to put it on the record as the USEPA is allowing the wholesale poisoning of these communities and the environment due to lack of adequate funding in the Superfund Program.

The Cornell-Dubilier Superfund Site in South Plainfield, New Jersey produced cancer causing Polychlorinated Biphenyls (PCBs) Capacitors and oils and dumped massive amounts of capacitors and chemicals including solvents into the adjacent wetlands and streams. Disposal practices at the site in the 1930's and 1940's were responsible for contaminating a vast geographic area including at least one other Superfund Site. The company also dumped PCB's at unremediated landfills where children play unaware they are not sports fields. The site also rendered the 10 mile Bound Brook with the distinction of being the only New Jersey water body with a ban on consuming even a single living organism, due to the fact the fish and other biota have PCB's at the highest levels seen in New Jersey's fish. The Bound Brook also traverses seven other towns and children frequently play in the PCB laced brook and subsistence fisherman catch and eat from the Brook, contaminated Spring Lake and New Market Pond. Both the lake and pond host

yearly fishing derbies and people regularly consume the poisoned fish that they catch for sustenance.

Recent USEPA's studies show these highly toxic cancer-causing chemicals will continue to discharge for decades, maybe centuries, without the USEPA taking active measures to stop the flow of chemicals from the 825-acre plume into this densely populated residential community.

The USEPA cannot stop the groundwater discharge nor do they have the resources to test the hundreds of homes, schools, daycare centers and businesses that sit directly above the 825-acre groundwater plume. In addition to emitting deadly gases that may pose a threat to unsuspecting families.

This problem is similar to the DuPont Public Works Site in Pompton Lakes, NJ where poison gases were discovered by the USEPA to be discharging from a chemical plume into over 450 homes. The scope of the problem in South Plainfield may be much greater than Pompton Lakes but the USEPA does not have the funds to sample the air in the structures located about the plume. The USEPA has been studying the Bound Brook for 20 years and without dedicated funding, staff and resources the USEPA cannot even finalize the investigation of the Bound Brook and Groundwater (Operable Unit 3 and Operable Unit 4).

The information has not been released to the public because the USEPA has no funding to stop these cancer-causing chemicals into the many towns that are being impacted along the 12-mile Bound Brook and the 825-acre toxic groundwater plume under South Plainfield, Piscataway and North Edison.

Without dedicated funding for the USEPA to conduct the critical cleanup work needed to address this direct human health and environmental threat, it may take centuries to stop the chemicals actively discharging from this site. Other Superfund Sites affected by the lack of funding include the Horseshoe Road and Atlantic Superfund Sites in Sayreville, the Raritan Bay Slag Superfund Site in Lawrence Harbor and Woodbrook Road Superfund Site in South Plainfield.

These companies use our nations wetlands, streams and rivers for their chemical dump as many companies have done, the Horseshoe Road Superfund Site has polluted vast areas on New Jersey's longest river, the Raritan. The USEPA was able to clean the uplands area when funding was dedicated to the cleanup. However, vast expanses of tidal and freshwater wetlands along the Raritan River and the Raritan River sediments remain poisoned with deadly arsenic, dioxins and other chemicals.

Our elected officials and regulators must adhere to the principals and goals of the Clean Water Act and make our water bodies swimmable, drinkable and fishable again.

Cleaning the expansive wetlands and dredging the Raritan River to make it safe again for

the commercial crabbers, fishermen, recreational boaters, jet skiers and bird watchers to use.

The USEPA has completed all the studies needed to begin the cleanup. Unfortunately, the USEPA's plan has stalled because the funding is just not available. Now fishermen and crabbers as well as those who walk along the Raritan River are routinely exposed to high levels of chemicals that continue to leach from these chemically soaked wetlands and contaminated sediments. The Raritan Bay Slag Superfund site is comprised of several massive toxic lead slag disposal areas indiscriminately dumped along large jetties, beaches and seawalls in the Raritan River and the Raritan Bay. USEPA used a very innovative approach to fast track the investigation of this site due to the impact on the Raritan Bay front community, the environment and its devastation to Bay front businesses.

Detractors look at Superfund as a bureaucratic program, and those who call for Superfund's abolishment have not seen the many Superfund communities throughout the country where cleanups have restored community health and reenergized property and home values. Cleaning our polluted waterways and stopping future pollution must be a priority of those we elect to govern and lead our country. It creates good paying jobs and our elected officials and regulators have a moral obligation to cleanup industries past assaults on our waterways. Cleaning the environment will lead the jobs revolution in the United States and indeed the world.

Recent university studies show a direct connection between the cleanup of Superfund Sites and a reduction in birth defects and childhood illness. In other words where Superfund Sites are cleaned up children are born healthier and suffer from less illness and disease. When we think about reauthorizing the "Polluter Pays" fees, we must keep in mind that it is only fair that those who caused this problem must pay to clean it up. Americans should not be forced to decide whether to fund a school, road or to pay for the cleanup of America's hazardous waste sites. The United States has a host of new problems in the public eye from waste impacting the shores of the United States from the Fukushima reactor to global climate change and rising sea levels. There are certainly no shortages of serious problems that Americans face. Restoring the "Polluter Pays" fees will give us the funds to finally address America's toxic legacy that continues to poison our country.

Dying from cancer after being exposed to hazardous waste sites sometimes takes years and is not the most glamorous way to die. If only we could get more Superfund Sites to have green rabbits like the CIC site did, maybe enough politicians will pay more attention to this issue to reauthorize the "Polluter Pays" provision of this important law that impacts every family and person in the United States and does not care whether you are Republican, Democrat or Independent.



Mr. SHIMKUS. Thank you very much. We appreciate your attendance and your testimony. So, I will start with my 5 minutes for opening questions.

First of all, just really for Ms. Brittain and anyone else can chime in real quick, the EPA today, and we have heard them numerous times, say they really, they feel the States are valued partners in this process. Do you think States feel that they are valued partners in the process?

Ms. BRITTAIN. I think that there are several parts of the process that States do not feel as valued as other parts. And it varies from State to State and region to region and how much involvement there is.

But, yes, there are definitely areas that ASTSWMO works on to try to encourage State participation in the process.

Mr. SHIMKUS. Does anybody else want to chime in on that?

Mr. SPIEGEL. Yes, I actually would like to say one thing about the State process. We have 25,000 toxic waste sites, besides the Superfund sites, in our State and we have no site remediation program. They made it all voluntary.

So, there really is no oversight. They let the polluters self-regulate in our State and so we really don't have it.

Mr. SHIMKUS. OK, so for the State of New Jersey, you don't think the States do. I don't want to get into State for State.

Mr. SPIEGEL. No, but it is a completely voluntary program that self-regulates and they dismantled the site remediation program.

Mr. SHIMKUS. OK.

Mr. SPIEGEL. The one thing—

Mr. SHIMKUS. Thank you. Let me just move on. We will get back to you.

Mr. SPIEGEL. Can I just make one point?

Mr. SHIMKUS. It depends how quick.

Mr. SPIEGEL. OK. Yes, the only thing that I would say that they should include more States in—State-recognized Indian tribes that are recognized by the State should have a seat at the table, and not only federally recognized tribes like the Ramapough Lunaape.

Mr. SHIMKUS. OK. Yes, thank you.

All right, Ms. Horinko, and you have already laid out where you think areas, and so did Mr. Nadeau about different ways we can improve the system, we appreciate that. So, I am going to jump to my second question for you, Ms. Horinko, because you laid those out pretty well.

Let's talk about administration reforms. Having come out of the EPA, what administration reforms you think could be added to the list of how we can improve the Superfund Program?

Ms. HORINKO. The number one administrative reform to me would be looking at ways to streamline the process. I couldn't agree more; the "remove-ia" program was actually piloted in Region III, I believe in the late '80s, early '90s.

Mr. SPIEGEL. I thought that was my term.

Ms. HORINKO. Well, victory has a thousand fathers. But we can concur that that program was very successful. It focused on the concept that was alluded to earlier. If we know we are going to put the stuff in a truck and drive it to a permanent landfill, let's do that.

So, that would be the number one recommendation I would have, is looking at the "remove-ial" program.

Mr. SHIMKUS. Great. Ms. Brittain, do you believe that it would make for faster and more efficient and cost-effective cleanup if States were authorized to implement CERCLA?

Ms. BRITTAIN. I think it would be a good thing. And I can speak for the State of Oklahoma right now. We often ask for lead on our Superfund sites. So, the State takes the lead in performing those cleanups. And we have the staff and we have the willingness and we are there in the community.

So, we can get back with you on the other States. So, it might depend but yes, there are States that like to take the lead.

Mr. SHIMKUS. Because we have had these hearings on Superfund. This is not our first one and I have been on the subcommittee now for 5½ years and there is always, I think there is a part of this debate is forgotten, is how much the States are asked to pay. That is why the bill of sale or what are the actual costs, so that you can look at, well, we are going to provide this much, this percentage, what are the real cost drivers? That is issue one.

Issue two is then the continued review of the site after the EPA finishes. Then that is on the State, that cost.

So, you want to be there at the planning and the execution because you are going to have the burden of the cost infinitum, once the site gets removed. Is that correct?

Ms. BRITTAIN. Yes, that is correct.

Mr. SHIMKUS. Mr. Nadeau, States play an important role, as we were just discussing, in the cleanup process. Do you think that States should be authorized to implement CERCLA?

Mr. NADEAU. There has been a division of labor where they take the lead and then EPA has oversight. I think that part is still important because the sediment guidance and the NCP provide a really good roadmap on how to make risk-based decisions.

And what I wasn't able to say earlier is that the number one problem we have right now is you have sediment guidance in the NCP and there is no accountability by the regions to headquarters.

Mr. Stanislaus pointed out there is a lot of discussion but I don't feel that headquarters even feels it is in their responsibility to direct the regions if they are off the tracks. And that is a serious problem because even, for example, on a cost-effectiveness requirement of the NCP requiring a proportionality between the remedy and the cost, no one is even running that analysis, even though it is a regulation of the U.S. Government. And likewise, it is very important at these sites that the experts in the NRB and in CSAG, when those recommendations are made, it is not part of the decision. It is purely voluntary and advisory. And the regions, basically, and many of them, have disregarded the recommendations. So, there is no accountability.

And the length of these studies, if you look at Williamette River in Oregon, as Congressman Schrader pointed out, 15 years of study, over \$100 million before anything is cleaned up. When you have five to seven companies that are willing to start tomorrow to clean up but, because of the all the bureaucracy and the conservatism of figuring out why this is here and why is that here. This is not that complicated. They are complex but you can figure out

pretty early on in an adaptive management or operable unit staged approach. This would be the biggest change that could be implemented. If you can figure out——

Mr. SHIMKUS. Yes, I need to get to my colleagues. You will get a chance to follow up. My time is way expired.

So, the Chair now recognizes the ranking member of the subcommittee, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair. And to all of our panelists, welcome.

Mr. Nadeau, can you explain the changing profile, if there is such a change, of our Superfund sites? In what ways are they becoming more complex?

Mr. NADEAU. The sediment sites and mining sites, for example, are geographically large. When you are dealing with contaminated sediments under a river, you can't see it and get your arms around it. Basically, we learned a lot of lessons with land but you can get your arms around it, you can see the edges, you can test it.

Then, with sediment sites, it is mixed. It is moving. You have ongoing sources that are adding. If you clean up a sediment site to a level a lot of it being suggested in the Pacific Northwest, let's just pick a number. Let's say it is ten. There are still 12 or 15 or 100 parts per million of the same material coming because of other sources.

So, they are complicated but there is no reason it should take 10 or 15 years to get them done. And there are ways to streamline that. And the nice thing about this is we think that the EPA policy is right on target; it just has to be applied. And if you apply the sediment guidance in good faith, you will get cost-effective streamlined remedies and you won't need 15 years to do it.

And if you implement a big dredging project, like as proposed for some of the large sites, maybe it is 15 years to get there, but then it may be 15 years of dredging. And unlike land sites, another counterintuitive part about this, is when you dredge more, no matter how careful you are, it creates a problem.

And in Commencement Bay in Washington, the State of Washington has looked at data from before dredging started and after. And 20 years after the dredging started, the numbers went from 38 before the problem was fixed to up to as high as 211 in fish and then down to now it is 70 or 80, after 20 years.

So, we have basically made it worse.

Mr. TONKO. Thank you.

Ms. Horinko, do you agree with that assessment? Are the Superfund sites becoming more complex?

Ms. HORINKO. The nature of the challenge is becoming more complex. And this is intuitive. You think about it, the sites that were easy to clean up, the drum sites, the more focused sites were cleaned up in the 1980s and the 1990s and the early part of 2000. What is left is the very large contaminated watersheds and mining sites that it took hundreds of years for them to get that contaminated. And so it is going to take a long time to put them back into productive reuse.

Mr. TONKO. Which types of sites would you recommend be given high priority under the Superfund program?

Ms. HORINKO. It is a hard question to answer because as someone who formerly ran the program, of course all of my sites are important. But I would look at sites where people are exposed immediately. So, where people are actually consuming contaminated fish or exposed to chemicals in their water supply. I would immediately look at sites where people are exposed. Those should be the highest priority.

Mr. TONKO. And do you believe that States may be inclined to list a site on the National Priorities List if there is not a viable responsible party to bill for the site's cleanup?

Ms. HORINKO. That may well be the case or, in some States, the State will threaten to list as a way to get a recalcitrant responsible party to the table. And that is a very valuable strategy. I have seen many sites get proposed for the NPL and never go final because the PRP woke up and said oh, my goodness, maybe I will snap to attention. So, that is very much a tool.

Mr. TONKO. And I agree that there may be more we can do to empower our State programs. I do not think, however, this solves the problem of orphaned sites. I believe complex and expensive cleanups, where there is no responsible party, will likely continue to be passed on to the Federal National Priorities List and, thus, Federal taxpayers.

With that, Mr. Spiegel, from your experience, if given enough resources, can Superfund sites be returned to productive use?

Mr. SPIEGEL. We actually work a lot with both Brownfields-to-Greenfields and Brownfield redevelopment, where they get a balanced redevelopment along the Raritan River. We are working on a very large one right now. It is about 660 acres as the Keasbey Redevelopment. And we are getting rateables. They are being cleaned up. And there are resources that are coming to these cleanups from both the EPA and from the State because they are generating rateables but it is when groups come together, when there is emphasis on certain brownfield redevelopment and we look at balance, I think that works the best, overall, with bringing all stakeholders together.

So, yes, we do see them being cleaned up.

Mr. TONKO. OK and just quickly, you have the experience to suggest that Superfund Programs have resources challenges. We know that there are orphaned sites where there is not a potentially responsible party to clean it up. Are there also sites where a PRP does exist but does not engage with the EPA because it knows that the EPA does not have the ability to clean up the site and send them the bill?

Mr. SPIEGEL. Yes, we see that more and more often. As Congressman Pallone has said, the responsible parties will do things to stall or delay. And oftentimes, they will do things like trying to drag in municipalities and try to bankrupt municipalities and so that delays the cleanup and then turns the municipality against its own residence.

And so if we could find better ways to pierce the corporate veil, we would make more money available for cleanups. We would have less delay and we would have more fair cleanups overall, at least in New Jersey, if not in the country.

Mr. TONKO. Well, my time has expired and with that, Mr. Chair, I yield back.

Mr. SHIMKUS. The gentleman's time has expired.

The Chair now recognizes my colleague from Mississippi, Mr. Harper, for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman, and thanks to each of you for being here on a very important topic.

Ms. Horinko, does the National Contingency Plan need to be updated? And if so, do you have suggestions regarding what needs to be done?

Ms. HORINKO. I do, Congressman Harper. I would take a look at the copious amount of procedural steps that need to be addressed as part of the National Contingency Plan, in order to make long-term remedial decisions. It is stultifying the process. It is bogging down the ability of States and local governments, and the regions, even, to get the cleanup decision.

So, that would be the first thing I would look at is all the steps in the long-term remedial program. Can those be collapsed and made more efficient?

Mr. HARPER. Right. Your written testimony suggests that the role of States in implementing Superfund needs to be seriously re-examined.

Would you please elaborate and explain what changes may need to be made?

Ms. HORINKO. Yes, the States now have such a deep bench of capability that didn't exist 35 years ago. Not in every section of the country but in many sections of the country they have the capability to manage most of the sites that come our way.

So, I am not saying do away with the NPL. I am not saying do away with the regional presence, by any means. You will always need that Federal backstop, but the States are now so robust in terms of their capacity that I think that they should be empowered.

Mr. HARPER. OK, should States be authorized to implement CERCLA?

Ms. HORINKO. I think so.

Mr. HARPER. OK. How could EPA utilize the process it undertakes for removal action to make remedial actions more timely, cost-efficient, and efficient?

Ms. HORINKO. I would look at the tools that the removal program has used over the past 35 years. Instead of the cumbersome RIFS process, which is years' worth of study around the remedial investigation of feasibility tools, I would look at the engineering evaluation and cost assessment and see how we can do in terms of attacking pieces of the problem at a time in these complex watersheds. I think doing a one size fits all approach is just bogging things down. I think we need to pick some spots where we can make improvements today and implement those changes now.

Mr. HARPER. Ms. Horinko, your written testimony discusses the Six Sigma or LEAN Program and notes that it has been used to make the RCRA Program more efficient.

How could that process be utilized to make CERCLA more efficient?

Ms. HORINKO. Well, I will commend the EPA for first of all piloting this process and, secondly, trying to do training across all ten

regions. And I was privileged to attend 3 days of training in Columbus, Ohio, last year, with the Ohio Remedial Project Managers.

So, I think more awareness, more training. I am working with members of industry, who have used Six Sigma LEAN processes in their industrial operations, to bring those lessons learned and share best practices. So, I think that kind of cultural change is very beneficial.

Mr. HARPER. Well, let's discuss technology for just a moment. How can technology that is available, what is available now, be utilized to make the Superfund Program more efficient?

Ms. HORINKO. One of the challenges that was discussed earlier at this hearing is the integrity of long-term stewardship controls, engineering controls, legal controls.

If you have made a decision that some contamination has to be left in place for some period of time because it is just not technically possible to get it out, no matter how hard you try, then you need to make sure those engineering controls, institutional controls have integrity. And by using technology, such as GIS tools and mapping tools and apps on your smart phones, not only EPA and the State can ensure that those institutional controls are structurally sound but citizens, real estate agents, neighbors, property owners can say wow, I see this plume here. What is being done about it? So, it is very empowering.

Mr. HARPER. You were the Assistant Administrator for OSWER and presumably worked on Superfund guidance regarding how to clean up contaminated sediment sites during your time at EPA.

What is your experience with respect to how well EPA is currently applying the guidance?

Ms. HORINKO. My experience has been that the results today are all over the map. Some regions are adhering closely to those adaptive management principles. Some are forging their own path.

And so the most common complaint I hear is that you get a different remedy, depending on what region of the country you are in and that doesn't seem right to me.

Mr. HARPER. Well, can you give me a specific example of where EPA is doing a good job and perhaps one where maybe they are missing the mark?

Ms. HORINKO. Sure. Sure, the sites where EPA is doing a good job tend to be not as controversial, not the ones grabbing the headlines like the Passaic or the Willamette. The Willamette especially because it is so front page news these days, is a site where I see the region sort of forging its own path, not necessarily look at adaptive management approach. So, I think that is a site where some near-term fixes could be made.

Mr. HARPER. And my time is up. I yield back. Thank you, Mr. Chairman.

Mr. SHIMKUS. Great questions, Mr. Harper. And I will yield to Congressman Schrader from Oregon for 5 minutes.

Mr. SCHRADER. Thank you very much, Mr. Chairman. I appreciate the panelists for being here.

I guess I will start with Ms. Horinko. I wonder if you could comment a little bit about the State's role in the EPA Superfund process.

Ms. HORINKO. I would be happy to do that. As I indicated earlier, the States have really matured in terms of their capabilities over the past 35 years. And I, when I was Assistant Administrator, helped to defer many sites to State attention because they have the ability to manage these cleanups. The States also have the ability to be much more in tune with their communities because they are on the ground.

So, I think the States can play a very important role in the Superfund going forward with legal authority.

Mr. SCHRADER. Thank you. Again, I am focused a little bit on the Portland Harbor, obviously. I am concerned about, you know I hear estimates of costs of \$50 million to fix this or that or \$100 million. And here, we are talking hundreds of millions of dollars, if not over a billion dollars.

So, it is a very complex project. Every panelist, including Mr. Stanislaus has talked about this is not your grandpa's cleanup program anymore. Very complex, difficult approaches and hence, the adaptive management suggestions that have come out of the agency over the years and stuff.

So, I would like both Ms. Horinko and maybe Mr. Nadeau talk about why Portland is not being used in an adaptive management approach.

Ms. HORINKO. The beauty of adaptive management is that you don't have to do everything at one time. When you are talking about ten river miles, you can't clean up 10 river miles at one time. It is just not possible.

And so adaptive management is let's try some different projects in areas where the risk is greatest. And then test out how that approach worked and then come back and readjust our plan so that we are constantly improving, constantly incorporating new science, new data.

It is not let's study everything forever and then see if we can make a decision for all time. Making a decision for all time is very difficult. Making a decision for the next 5 years is not that hard of a process.

So, I think that is the key thing that I would like to see applied to this site.

Mr. SCHRADER. Thank you. Mr. Nadeau, do you agree?

Mr. NADEAU. I think Ms. Horinko has said it very well.

Mr. SCHRADER. Do you have anything else?

Mr. NADEAU. It allows you to get started on a cleanup early. Instead of waiting until you think you have the perfect solution, you could start early. You can address something in 2 years, or 3 years, or 4 years. And then it is a great case study to prove whether the remedy is working in combination, typically, of dredging and capping or capping alone. And these are early areas.

In a site like the Willamette, you could probably reduce 70 to 80 percent of the risk in an adaptive management mode and then monitor it. You may find very well that you have done your job and you just monitor it indefinitely. It is much more efficient. You can get much more done earlier. And companies are willing to do this.

Companies want to do the right thing. They don't want it to drag out 15 years. No one is stalling.

Mr. SCHRADER. No. I know that is not the case. They want to get this thing done. They are as tired as everybody. The community, the businesses, EPA itself want to get this done. And so I agree with that and that sounds like that is a very good approach.

I am concerned, Mr. Nadeau, you talk about the sedimentation guidelines and perhaps not being looked at in a serious way, that EPA is not following its own recommendations. Now, I am a little bit of a scientist myself, having spent 30 some years in veterinary medicine. It seems very logical to me that the dredging does stir up a lot of stuff, things that haven't been put in suspension.

In some of your written testimony, you talk about a couple of sites where once it was all dredged up, now they are still seeing more contamination than before the remediation was put into play.

Could you comment on how the sediment guidance might be more helpful for a site like the Portland Superfund site?

Mr. NADEAU. Well, the sediment guidance right now requires examination of source control so that you don't get recontamination but it also requires your decision to be on a risk-based approach. And that also includes the risk of harm by doing an implementation of the remedy. So, no matter how careful you are, you are not going to get rid of 100 percent of the problem.

The newer techniques of capping, which are not new anymore, will allow you to seal in a lot of that contaminated sediment, not creating this big uncontrolled cloud. So, no matter, everyone's intent is to get 100 percent. No one is successful at that.

So, by applying adaptive management, you also get the benefit of learning the lessons of what worked under the specific conditions of the sites. It will really allow the environment to be remediated more quickly and in a very strong protective way and in a cost-effective manner.

Mr. SCHRADER. Thank you both very much, all of you. I really hope that EPA looks at the adaptive management guidelines, the sedimentation guidelines, before they make their record of decision because, again, I think everyone wants to do the right thing.

And I yield back, Mr. Chairman.

Mr. SHIMKUS. The gentleman yields back his time. The Chair now recognizes the ranking member of the full committee, Mr. Pallone for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman.

I want to thank Bob Spiegel, my constituent for testifying before the subcommittee today. He and I have worked for many years on Superfund cleanups in New Jersey.

When he was talking about the green rabbits, that was at the CIC site in Edison, which was, at one point, ranked as the worst, the most toxic site on the Superfund list. And the used to manufacture Agent Orange. And then they dumped the Agent Orange on the site, which is just incredible.

But anyway, I wanted to ask you some questions. You know we talked about how Superfund cleanups are essential for protecting public health and funding has been cut considerably over the last decade. And the GAO released a report last year looking at funding and found that the number of non-Federal Superfund sites increased by 10 percent in the last 15 years, while funding for the program in the same period fell from \$2 billion to \$1.1 billion. And



obviously, we can't expect to successfully clean up more sites by slashing funding for the program.

So, Bob, I just wanted to ask you, in your experience, how has this drop-off in funding affected cleanups and have you seen delays in addressing contamination at specific sites?

Mr. SPIEGEL. At sites where there are orphaned sites, ones where either there is no viable responsible party or one that is recalcitrant, the cleanups have pretty much come to a halt.

And in a lot of these projects are what they call shovel-ready. In other words, all the studies are done. All the work that needed to be done to be done to determine the best type of cleanup or the most protective cleanup, it is done. They are just waiting for funding. Then, we are being told that the funding is not coming.

But also, more so, and I think you mentioned this before, sites where we do have a viable responsible party, the threat of treble damages is no longer a viable threat because they know the U.S. EPA is not going to come in. They don't have the resources to do a 10 or a 20, or a \$30 million cleanup, which might be what is required, as is in the case of the Ringwood Mine Superfund site, where you have drinking water for 2 million people at risk.

And so Ford has been just dragging their feet with the cleanup, when everybody knows that the pink sludge that has been dumped in the mines up there and the poisoning of the Ramapough Lunaape tribe, that that sludge has to be taken out, in order to protect the drinking water for two million people, and to protect the ancestral rights of the people that live on the mountain. But Ford knows what has to be done but they have the ability to drag it out and delay.

And that is what we seeing more and more, took, is not just with orphaned sites but with other sites where there is a PRP that does have the resources just delays for no real reason, other than they can.

Mr. PALLONE. I appreciate that. Before we run out of time, I wanted to deal with this issue of robust and effective cleanups, as opposed to capping, for example. And during the first panel, I asked Mr. Stanislaus about the drop-off in funding and how has that affected the quality of the cleanups.

So, in your experience, have you seen cost, rather than health concerns, influence the remedies selected for cleanups? And do you agree with Mr. Stanislaus that the drop-off in funding hasn't affected the quality of the cleanups?

Mr. SPIEGEL. I think all you really have to do is to look at the remedies that have come out since the Trust Fund has been depleted to look and see what remedies have been chosen and more and more remedies in New Jersey and in Region II that I have looked at, they are leaving behind the principle threat waste, which is what EPA used to always try to remove. Even if they had to cap some residual waste, they would remove the principle threat waste as a means to get rid of the source.

And now we are seeing that that is no longer being done across the board. I could probably rattle off 20 sites that I know of where the principle threat waste is being left behind. It used to be the exception to the rule and now it seems to be the rule.

And when you put a plastic pool cover on a site, all you are doing is creating a future problem because I think the people on this panel will agree all caps eventually fail and they require maintenance. So, what you are doing is creating a problem for the future and it is always cheaper when you take and you take these costs and you expand them out to clean up a site and get rid of the contamination than to have to cap it and monitor it and babysit it forever.

Caps always fail. It is just a question of when.

Mr. PALLONE. All right, I appreciate all that you do, Bob. Really, you know, Mr. Chairman, I know he is my constituent. You would just say, "Oh, you are just saying that because he is your constituent" but—

Mr. SHIMKUS. No, I am not.

Mr. PALLONE. No, I know. But, I mean, this guy has been unbelievable. You know he started out in Edison, which is in my district, but the Edison Wetlands Coalition is essentially the main organization in the whole State of New Jersey that deals with these sites and tries to seek remedies and do cleanup. So, even though he is in my district, he is really the number one guy in the State on this issue.

Mr. SPIEGEL. Come visit our dog park, too, the CIC site and see what happens when you have money in the fund. And the dog park actually opened last week, so it is something that is—

Mr. SHIMKUS. I look forward to getting my invitation to visit the dog park.

Mr. PALLONE. Thanks, Mr. Chairman. Thank you, Bob.

Mr. SPIEGEL. It is certainly better than an Agent Orange manufacturer.

Mr. SHIMKUS. Amen. Amen.

So, thank you. We appreciate your testimony. This committee, especially the subcommittee, we just really had a pretty good successful run on reforming the TSCA. And I think it is somewhat similar. I think we all knew program was broken. We all knew we could do better. And then that started the process.

So, I am not sure where I will be in a 5-year process but I do think we could better and if we start talking together, maybe we can move this process and get some of these reforms and get a quick remediation. So, I appreciate my members and having the ranking member, especially, Mr. Pallone, stay here for the end. That is unique, and that is special, and we appreciate that.

And with that, I will adjourn the hearing. Thank you for your testimony.

[Whereupon, at 12:33 p.m., the committee was adjourned.]

[Material submitted for inclusion in the record follows:]

#### PREPARED STATEMENT OF HON. FRED UPTON

Superfund is now some 36 years old, and the truth is some cleanup projects that we are working on seem as old as the law itself. The Kalamazoo River cleanup has been underway most of the time that I've served in Congress, but finally we are seeing some light at the end of the tunnel. While we are by no means finished on the Kalamazoo River, we have made some significant headway.

If red tape were a toxic material, the CERCLA law would be the biggest Superfund site of them all. Today we ask, "Does it have to be that way?" If the Federal Government is to have a role, it should be to bring parties together to speed clean-

ups. Instead, CERCLA seems to slow them down. What changes do stakeholders suggest to speed things up? How can we make CERCLA more efficient? Can we reduce the red tape? Should the States and communities have a bigger say-so in clean-up plans, and have it sooner? I know that when EPA began to listen to local and State stakeholders on the Kalamazoo project, a more workable and acceptable solution began to emerge.

I thank Assistant Administrator Mathy Stanislaus for returning to the committee. He has been one of our most frequent witnesses through the years, and we appreciate his consistent and congenial testimony.

We are also glad to hear from our panel of stakeholders and experts as well. A hearing in this subcommittee would not be complete without the voice of the States and other partners.

We also welcome two of our House colleagues, Ann Wagner and Lacey Clay, who will share their frustration over the pace of a cleanup in Missouri. Effective advocates for their constituents, they are willing to think outside the box to find the most efficient solution. So are we, and that's why we are having this hearing. Let's find solutions that produce, not just more process and more delays, but workable, effective cleanups.

All of our Members appreciate the chance to take a deeper dive into these thorny issues that impact so many Americans and we are looking for constructive solutions. Let's listen carefully so that we can find them.

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DEPARTMENT OF THE ARMY

COMPLETE STATEMENT FOR THE RECORD

OF

MS. KAREN J. BAKER  
CHIEF, ENVIRONMENTAL DIVISION

BEFORE THE

COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

UNITED STATES HOUSE OF REPRESENTATIVES

ON

OVERSIGHT OF CERCLA IMPLEMENTATION

July 13, 2016

Chairman Shimkus, Ranking Member Tonko and distinguished members of the Subcommittee, thank you for allowing me to provide written testimony on the Formerly Utilized Sites Remedial Action Program and the proposed legislation (H.R. 4100 – “A Bill to require the Secretary of the Army, acting through the Chief of Engineers, to undertake remediation oversight of the West Lake Landfill located in Bridgeton, Missouri”). The Administration has serious concerns about this legislation and cannot support it in its current form, since the transfer of this site to the Formerly Utilized Sites Remedial Action Program (FUSRAP) will likely further unnecessarily delay the cleanup of the site and it will saddle the general taxpayer with the cost of cleanup and cost recovery as compared to the Potentially Responsible Parties at the site. My testimony today will focus on the technical questions on which the Corps has provided information in the past. As part of my testimony, I am attaching two letters answering questions/concerns from the U.S. House of Representatives Energy and Commerce Committee’s Chairman (the Honorable Fred Upton) and the Ranking Member (the Honorable Frank Pallone).

#### **THE FUSRAP PROGRAM**

The Formerly Utilized Sites Remedial Action Program (FUSRAP) was initiated in 1974 to identify, investigate, and if necessary, clean up or control sites throughout the United States contaminated as a result of the Nation’s early atomic weapons and energy program. These activities were conducted by the Manhattan Engineer District (MED) or Atomic Energy Commission (AEC) who are both predecessors of the U.S. Department of Energy (DOE).

Congress transferred responsibility for administration and execution of cleanup at eligible FUSRAP sites to the U.S. Army Corps of Engineers (Corps) in the Energy and Water Development Appropriations Act of 1998 [Public Law 105-62, 111 Stat.1320, 1326].

The Corps continues to address these responsibilities, which include sites referred after 1998 under a Corps of Engineers/DOE Memorandum of Understanding, and sites added to the program by Congress. When executing FUSRAP, the Corps follows the investigation and response framework of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

#### **WEST LAKE LANDFILL, MISSOURI**

The Superfund site known as West Lake Landfill Site, located in Bridgeton, Missouri is currently being remediated by the owner of the landfill pursuant to an order by the U.S. Environment Protection Agency (EPA) and under a plan developed by EPA. H.R. 4100, referenced above, would move the responsibility for responding to radioactive

contamination at the site to FUSRAP, the program described above and executed by the Corps.

Some of the common questions asked and answered on this potential legislation are: the timing of the potential remediation under FUSRAP; the potential remedy that would be proposed under FUSRAP; the potential cost of cleanup of this site itself and its relation to other ongoing sites in FUSRAP; and, the ability of the Corps to hold responsible and recoup costs from the Potentially Responsible Party. I will briefly discuss each of these issues and direct your attention to the two attached letters.

#### Timing of remedy under FUSRAP

As discussed in the letters, several variables such as the availability of funding, prioritization, and the remedy that is selected will affect when the Corps would be able to address the contamination. There are 24 sites currently in the FUSRAP program and three other sites that are eligible for consideration and are awaiting a final determination as to whether they will be included. If the West Lake Landfill site is added, its relative priority will be ranked against the priority of other sites currently in the program. Funds available for FUSRAP must be prioritized. The Corps does not have sufficient information to predict what priority the site might have in the program, but the earliest that the site could be programmed for funding to begin an evaluation is Fiscal Year (FY) 2018.

#### Proposed remedy

As stated in the letters, FUSRAP is a cleanup program, so the Corps would assess alternatives to address the low-level radioactive materials at the site. When funding is available, the Corps would begin by reviewing the EPA site documents including all information from the current cleanup effort by the site owner before the Corps could determine a path forward. This would include reviewing the information already generated to date through EPA's regulatory efforts. The Corps would also be required to obtain permission from the current landowner to enter the property. This would be an additional process and would be necessary to allow the Corps to properly evaluate the site and conduct any work. Any conclusions which the Corps may reach from assessing the site, reviewing information from the current cleanup efforts, and any new information would involve additional time and funding.

#### Cost of cleanup and effect on other sites

At this time, the Corps cannot definitively state what action it would recommend, but can state that the response action would be spread out over several years. Thus, it is impossible to state how much a response would cost, but we note that in 2011, EPA estimated the cost of its selected cap-in-place remedy to be \$43 million. Of course, this estimate was made using then current information and is likely one of the less costly alternatives that the Corps would consider. Also according to EPA, the estimated costs to conduct the "complete rad removal" with off-site disposal remedy

(i.e., design costs, capital costs, and costs for monitoring during the construction period) range from \$259 million up to \$415 million, depending upon which disposal facility is used.<sup>1</sup> Recurring annual costs to operate, monitor and maintain the facility would also need to be considered.

The recent annual appropriation to FUSRAP is approximately \$100 million. This amount is divided among the 24 sites currently in the program on a priority basis. The Corps lacks sufficient information to analyze the priority that would be appropriate for any additional sites. The vast majority of the current FUSRAP appropriations are dedicated to ongoing cleanup at sites already in the program, with the goal of completing ongoing projects first.

#### Paying for Cost of Response

As stated in the letters, it is the Corps understanding that EPA, using its regulatory authority, intends to order the Potentially Responsible Parties (PRPs) to carry out the necessary cleanup activities with hopes that this will result in a negotiated enforceable agreement.

In contrast, a transfer to FUSRAP would require the Corps to use appropriated funds to accomplish the remedy and then, using additional appropriated funds, to pursue the PRPs for cost recovery. Cost recovery is uncertain, site-specific and depends on many circumstances, but again, would be conducted after the cleanup would have been conducted.

#### SUMMARY:

Thank you for the opportunity to provide the background on the Formerly Utilized Sites Remedial Action Program and to discuss potential issues of adding the West Lake Landfill site to the program. Please see the attached letters for additional details and background.

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<sup>1</sup> Supplemental Feasibility Study- "Radiological-Impacted Material Excavation Alternatives Analysis West Lake Landfill Operable Unit-1":[https://archive.epa.gov/region07/cleanup/west\\_lake\\_landfill/web/pdf/supplemental\\_feasibility\\_study-west\\_lake\\_landfill\\_ou-1.pdf](https://archive.epa.gov/region07/cleanup/west_lake_landfill/web/pdf/supplemental_feasibility_study-west_lake_landfill_ou-1.pdf)

FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

May 17, 2016

Lieutenant General Thomas P. Bostick  
Commanding General and Chief of Engineers  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314

Dear Lieutenant General Bostick:

As you may know, a bill pending before the United States House of Representatives, H.R. 4100 would transfer jurisdiction over the West Lake Landfill Superfund Site (West Lake Landfill) in Bridgeton, Missouri from the U.S. Environmental Protection Agency (EPA) to the U.S. Army Corps of Engineers (USACE). The United States Senate recently approved S. 2306, which is the companion bill to H.R. 4100, by unanimous consent. The Congressional Budget Office indicated that S. 2306 will not affect direct spending and both the House and Senate bills have bipartisan support from the Missouri congressional delegation.

The West Lake Landfill is an inactive landfill that has received significant attention recently because of the presence of radiologically-impacted material and because of subsurface smoldering at the adjacent Bridgeton Landfill. The West Lake Landfill is on the National Priorities List (NPL) and EPA has jurisdiction over the cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The West Lake Landfill was added to the NPL in 1990 and there is concern in the local community about the pace of the remedial actions taken by EPA. Additionally, for the residents living near the landfill, the proximity of the underground fire to radiologically-impacted material has created a fear of a public health and safety issue. The people of St. Louis, Missouri and the surrounding area have been waiting for resolution on this site for a long time and some local citizens believe that the West Lake Landfill would be better cleaned up by the USACE under the Formerly Used Sites Remedial Action Program (FUSRAP).

However, several issues have been raised about whether the transfer of jurisdiction over the cleanup at the West Lake Landfill from EPA under CERCLA to the USACE under FUSRAP would be the best course of action – including, issues associated with the funding and timing of



Letter to Lieutenant General Thomas P. Bostick  
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the cleanup. I write today to seek information and clarification about some of these matters. Please respond to the following questions by June 7, 2016.

1. Do you believe that the transfer of the West Lake Landfill to the FUSRAP will expedite the cleanup process versus leaving it under the jurisdiction of EPA and CERCLA?
2. If the cleanup of the West Lake Landfill were transferred to the USACE under the FUSRAP, what would be the USACE's proposed timeline for:
  - a. Completing an evaluation and making a decision regarding the appropriate remedy?
  - b. Implementing the selected remedy?
3. As the West Lake Landfill is on the NPL, EPA has final decision-making authority over the remedy selection – How would that impact the timing of actions taken by the USACE under FUSRAP?
4. If EPA issues a record of decision (ROD), would the USACE take into account the remedy selected by EPA? If so, how?
5. How would transfer of the West Lake Landfill to the FUSRAP impact the work that is currently underway, such as the installation of a planned physical isolation barrier to separate the radiologically-impacted material at the West Lake Landfill from the subsurface smoldering event at the nearby Bridgeton Landfill?
  - a. To the best of your knowledge, is a Responsible Party paying for the work that is currently taking place at the West Lake Landfill?
  - b. Would the USACE similarly be able to require a Responsible Party to pay for the work?
6. How does the USACE categorize and prioritize sites for cleanup under the FUSRAP?
  - a. Where would the West Lake Landfill fall in order of priority?
7. There is some concern about how the USACE would budget for the investigation and cleanup under the FUSRAP.
  - a. Would the money come from the USACE's appropriated funds? If, not please explain where the money will come from.
  - b. Would the USACE be able to make a Responsible Party at the West Lake Landfill pay all or a portion of the cleanup costs?

Letter to Lieutenant General Thomas P. Bostick  
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- c. At what point in the process would the USACE be able to recoup funds from a Responsible Party? Would the USACE be able to require a Responsible Party to pay concurrently as the investigation and cleanup progresses or would the USACE have to seek cost recovery after-the-fact?
- 8. Does the Corps currently have sufficient funding to remediate the West Lake Landfill?
  - a. If not, in your best estimate how much would Congress need to appropriate for the Site?
  - b. In your estimation, what is the earliest date that the USACE would have funds available to undertake:
    - i. A site evaluation and selection of a remedy at the West Lake Landfill?
    - ii. The remediation of the West Lake Landfill?

Thank you for promptly attending to this request. Should you have any questions, please do not hesitate to have your staff contact Tina Richards of the majority committee staff at 202-225-2927.

Sincerely,



Fred Upton  
Chairman



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
441 G STREET, NW  
WASHINGTON, D.C. 20314-1000

JUN 02 2016

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your May 17, 2016, letter to Lieutenant General Thomas Bostick, Chief of Engineers, regarding the West Lake Landfill (WLLF) Superfund Site in Bridgeton, Missouri. LTG Bostick asked that I reply on his behalf. As you are aware, the site is currently being addressed by the responsible parties pursuant to multiple orders from the U.S. Environmental Protection Agency (EPA) and under plans approved by EPA. A bill, (S. 2306) has passed the U.S. Senate that would move the responsibility for responding to radioactive contamination at the site to the Formerly Utilized Sites Remedial Action Program (FUSRAP), a program that is executed by the U.S. Army Corps of Engineers (Corps) under its Civil Works program. A corresponding bill has been introduced in the U.S. House of Representatives (HR 4100). In your letter, you asked a number of questions about these bills. Before I address each of your questions, I do want to clarify, while the Corps may respond to Congressional inquiries and questions regarding pending legislation, the Corps does not take a position for the Administration in support or opposition of proposed legislation. If the legislation were enacted, the Corps would execute the law in accordance with its requirements. For ease of reading, I have restated the questions here, along with the corresponding response.

1. Do you believe that the transfer of the West Lake Landfill to the FUSRAP will expedite the cleanup process versus leaving it under the jurisdiction of EPA and CERCLA?

Answer: The addition of the site to the FUSRAP program would not accelerate remediation at the WLLF. The FUSRAP program would only address the cleanup of low level radiological material at the site, which is only one issue of concern at the landfill. Currently, the Potentially Responsible Parties (PRPs) execute and pay for actions as directed by EPA. Transferring the site to FUSRAP would subject the site to the limitations of the FUSRAP budget and appropriations process, and its necessary prioritization with respect to the sites currently competing for the program's limited appropriations. Additionally, there is no guarantee that the ultimate cleanup actions would be different than those which would occur under the current process.

In 2008, after EPA selected a remedy to cap the site and leave contaminated material in place, advocates challenged the remedy as not being fully protective. EPA is now considering three potential alternatives: the original 2008 remedy, a partial excavation, or a full excavation of the site.

2. If the cleanup of the West Lake Landfill were transferred to the USACE under the FUSRAP, what would be the USACE's proposed timeline for:

- a) Completing an evaluation and making a decision regarding the appropriate remedy?

Answer: The answer to this question depends on several variables such as the availability of funding and prioritization throughout the FUSRAP program, so the Corps cannot answer the question at this point. As background, there are 24 sites currently in the FUSRAP program and three other sites that have been determined as eligible for consideration and are awaiting a final determination as to whether they will be included in FUSRAP. If WLLF is added, its relative priority will be ranked against the priority of other sites currently in the program. Funds available for FUSRAP must be prioritized. The Corps does not have sufficient information to predict what priority the site might have in the program. Any proposed onsite activities could not begin until the Corps obtained a right of entry from the landowner. Such agreements typically take a number of months or longer to negotiate and in some cases landowners have denied the Corps entry to their property.

- b) Implementing the selected remedy?

Answer: In addition to the budget and prioritization variables discussed above, the alternatives that would be considered could differ greatly in terms of time and cost requirements. As stated above, any proposed onsite activities could not begin until the Corps obtained a right of entry from the landowner. Such agreements typically take a number of months or longer to negotiate and in some cases landowners have denied the Corps entry to their property. Following selection of a remedy, additional steps such as engineering, design and contract procurement would need to be completed before work could begin.

3. As the West Lake Landfill is on the NPL, EPA has final decision-making authority over the remedy selection - How would that impact the timing of actions taken by the USACE under FUSRAP?

Answer: Under the FUSRAP program, the Corps would follow the CERCLA process and its proscribed procedures. The Corps would analyze an array of alternatives, seek public comment, and ultimately would select a remedy with the approval of EPA. The Corps works closely and in tandem with regulators at every site-whether on the NPL or not, so the fact that the site is on the NPL is not anticipated to impact the timing of remedy implementation.

4. If EPA issues a record of decision (ROD), would the USACE take into account the remedy selected by EPA? If so, how?

Answer: The Corps would give serious consideration to any remedy recommended by EPA. However, if the site is transferred to the FUSRAP program, the process would require a review of alternatives before a remedy would be selected. As stated above, EPA would remain in its regulatory role at the site and before any remedy could be implemented, it must be approved by EPA.

5. How would transfer of the West Lake Landfill to the FUSRAP impact the work that is currently underway, such as the installation of a planned physical isolation barrier to separate the radiologically-impacted material at the West Lake Landfill from the subsurface smoldering event at the nearby Bridgeton Landfill?

Answer: It is our understanding that actions that are currently underway are pursuant to administrative orders from EPA. It is unclear how a transition to execution under the FUSRAP program would affect previous actions ordered by EPA. The Corps does not have the same authority to order other parties to take action. EPA would remain the regulatory agency at the site, so any transition of actions to address WLLF under FUSRAP would have to be coordinated with EPA. Specifically, with regard to the planned barrier, our understanding is that it will be located on the Bridgeton Landfill and West Lake Landfill boundary and installed by the land owner with EPA oversight. Pursuant to the proposed transfer, Corps authority under FUSRAP would only extend to addressing radioactive contamination at WLLF. The Corps would not be involved with the installation of the barrier as a result of shifting the WLLF site to FUSRAP. If the WLLF is shifted to the FUSRAP program, the Corps would coordinate with EPA to minimize impact to ongoing activities and related to addressing any other contamination in the WLLF landfill or related sites.

a) To the best of your knowledge, is a Responsible Party paying for the work that is currently taking place at the West Lake Landfill?

Answer: The site is currently being remediated by the owner of the landfill pursuant to multiple orders by the EPA and under plans approved by EPA.

b) Would the USACE similarly be able to require a Responsible Party to pay for the work?

Answer: No. While the FUSRAP program legislation confers lead agency authority for CERCLA response actions at FUSRAP sites to the Corps, it does not confer regulatory or enforcement authority. Such authority has never been applied to FUSRAP. The lack of authority to order PRPs to take response actions under FUSRAP is recognized in the proposed legislation, which provides that the Corps will work in cooperation with EPA and the Department of Justice (DOJ) in addressing other PRPs responsibilities at the site.

6. How does the USACE categorize and prioritize sites for cleanup under the FUSRAP?

Answer: The FUSRAP program actively gives priority to those objectives and phases of work that best support the overall program goal of eliminating demonstrable threats to public health, safety, or the environment. Funding priority is given towards previously awarded contracts to continue design, removal, or remediation, especially for projects in the construction phase so work can be conducted efficiently and effectively. This priority is followed by continued funding for ongoing Remedial Investigations (RI), Feasibility Studies (FS) and Records of Decision (ROD); and then for new RI/FS/ROD contracts. Final funding priority is given to activities concerning site closeout, coordination and transition to Department of Energy – Office of Legacy Management; as well as to any removal actions needed to meet CERCLA criteria for time-critical or non-critical removals. With regard to prioritization, the House Report accompanying the FY 12 appropriation advised, “The Committee continues to support the prioritization of sites, especially those that are nearing completion.” H.R. REP. 112-118 (June 24, 2011). The Joint Explanatory Statement accompanying the Energy and Water Development Appropriations Act for FY 12 echoed that in prioritizing sites, the Corps is to focus on sites nearing completion.

a) Where would the West Lake Landfill fall in order of priority?

Answer: There are 24 sites currently in the FUSRAP program and three other sites that have been determined as eligible for consideration and are awaiting a final determination as to whether they will be included in FUSRAP. At this time there are six sites underway which have priority as ongoing cleanup actions and which account for over 80% of the current funding level. As stated previously, if WLLF is added, its relative priority will be ranked against the priority of other sites currently in the program. Funds available for FUSRAP must be prioritized. The Corps does not have sufficient information to predict what priority the site might have in the Program.

7. There is some concern about how the USACE would budget for the investigation and cleanup under the FUSRAP.

a) Would the money come from the USACE's appropriated funds? If, not please explain where the money will come from.

Answer: Yes, both S. 2306 and H.R. 4100 provide that “The Secretary shall use amounts made available to the Secretary to carry out the Formerly Utilized Sites Remedial Action Program to carry out [this remediation].”

b) Would the USACE be able to make a Responsible Party at the West Lake Landfill pay all or a portion of the cleanup costs?

Answer: The Corps would be forced to request that the DOJ initiate and conduct a cost recovery action to recapture FUSRAP expenditures. The legislation recognizes this and

provides for cooperation among the DOJ, EPA, and the Corps. Republic Services, the current owner of the site and any other PRPs identified through the EPA's Superfund process, would not necessarily continue to pay for all of the actions at the site. Instead, these costs would initially be paid using appropriated funds and legal action would have to be initiated to recover those costs. This would be an additional process and would further increase costs to the federal government and would likely take considerable time given the PRPs could resist paying 100% of all costs, particularly those added by moving the site to the FUSRAP program.

- c) At what point in the process would the USACE be able to recoup funds from a Responsible Party? Would the USACE be able to require a Responsible Party to pay concurrently as the investigation and cleanup progresses or would the USACE have to seek cost recovery after-the-fact?

Answer: EPA has the authority to require responsible parties to pay for response actions. The Corps does not have such authority. The DOJ would be required to bring an action forcing the negotiation of some form of cost recovery or concurrent payments. A shift to the FUSRAP program would certainly impact the current situation where it is anticipated that the PRPs will pay all costs upfront. Under FUSRAP and working through the legal process it is not clear what the outcome or timing would be.

8. Does the Corps currently have sufficient funding to remediate the West Lake Landfill?

Answer: The response action would be spread out over several years, but at this time, the Corps cannot definitively state what cleanup action it would recommend and therefore does not know how much a response would cost or how long it would take. The recent annual appropriation to FUSRAP is approximately \$100 million. This amount is divided among the 24 sites currently in the program on a priority basis. The Corps lacks sufficient information to analyze the priority that is appropriate for WLLF. The vast majority of the current FUSRAP appropriations are dedicated to ongoing cleanup at sites already in the program.

- a) If not, in your best estimate how much would Congress need to appropriate for the Site?

Answer: This is dependent on the remedy that is chosen and at this time, the Corps lacks sufficient information even to make a reasonable estimate. However, we note that in its 2011 Supplemental Feasibility Study, EPA estimated the cost of its selected cap-in-place remedy to be \$43 million. Of course, this estimate was made using then current information and is likely one of the less costly alternatives that the Corps would consider. The estimated costs to conduct the "complete rad removal" with off-site disposal remedy (i.e., design costs, capital costs, and costs for monitoring during the construction period) range from \$259

million up to \$415 million, depending upon which disposal facility is used. Recurring annual costs to operate, monitor and maintain the facility would also need to be considered.

b) In your estimation, what is the earliest date that the USACE would have funds available to undertake:

c) A site evaluation and selection of a remedy at the West Lake Landfill?

Answer: The Corps does not have sufficient information to predict what priority the site might have in the program, but, as noted above, the vast majority of current FUSRAP appropriations are dedicated to ongoing cleanup at sites already in the program.

d) The remediation of the West Lake Landfill?

Answer: This is dependent on the prioritization among current sites and any which may be added in the future, the selected remedy for WLLF, and the future level of funding for the program.

Thank you for your questions and continued interest in the Army's Civil Works Program. If you have any questions or concerns, please feel free to contact me at (202) 761-0100.

Sincerely,



Steven L. Stockton, P.E.  
Director of Civil Works



FRED UPTON, MICHIGAN  
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY  
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

March 10, 2016

Lieutenant General Thomas P. Bostick  
Commanding General and Chief of Engineers  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314-1000

Dear Lieutenant General Bostick:

I write regarding the West Lake Landfill Superfund Site in Bridgeton, Missouri. Two landfill areas at the site were radiologically contaminated in 1973 when they received soil mixed with leached barium sulfate residues. The U.S. Army Corps of Engineers (USACE) is currently assisting the Environmental Protection Agency (EPA) with its work at the site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund). It is my understanding that EPA will be proposing a final remedy for the site this year, after the 2008 Record of Decision was challenged as not being fully protective.

There are currently efforts in Congress to transfer this site into the Formerly Utilized Sites Remedial Action Program (FUSRAP), which is under the purview of USACE. In July 2015, members of the Missouri Congressional delegation asked the Department of Energy to reconsider West Lake Landfill's qualifications for inclusion in the FUSRAP program. That request was denied last September. Since then, the Missouri Senators and Members of the Congressional delegation have introduced legislation, S. 2306 and H.R. 4100, to transfer authority for cleanup of the site from EPA to USACE under FUSRAP. The United States Senate passed S. 2306 on February 2, 2016 and both bills are now pending before the House Committee on Energy and Commerce.

In an effort to better understand the implications of such a proposal and the impact on the cleanup of the West Lake Landfill Superfund site, I respectfully request responses to the following questions:

1. According to EPA, a revised proposed Record of Decision for cleanup of the site is expected to be issued this year. If the site were transferred to FUSRAP, would the process for USACE to take over the ongoing work currently being completed by EPA be seamless?

Lieutenant General Thomas P. Bostick  
 March 10, 2016  
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- a. What steps would USACE need to take to study, develop a plan, and implement cleanup of the site?
  - b. What would be the timeline for this process, and how long would it take to complete?
  - c. Would shifting the site into FUSRAP accelerate cleanup of the site?
2. In 2008, after EPA selected a remedy to cap the site and leave contaminated material in place, advocates challenged the remedy as not being fully protective. EPA is now considering three potential alternatives: the original 2008 remedy, a partial excavation, or a full excavation of the site.
  - a. If the site were transferred to FUSRAP, would USACE select a full excavation as the remedy of choice?
  - b. Is it possible that USACE would implement the 2008 remedy and cap the material in place?
3. Under Superfund, EPA has the authority to compel potentially responsible parties (PRPs) to either clean up contaminated sites or pay for the necessary costs. Use of this polluter pays principle ensures that taxpayers are not stuck paying for the pollution of others. EPA is currently pursuing three PRPs to pay for the cleanup of this site.
  - a. What authority does USACE have under FUSRAP to require PRPs to clean up contaminated sites? What authority does USACE have under FUSRAP to compel PRPs to pay for the necessary cleanup of contaminated sites?
  - b. Does USACE have the same "Enforcement First" authority as EPA to hold PRPs accountable for covering the costs of cleaning up contaminated sites?
  - c. Would the ability of USACE to pursue PRPs be contingent upon appropriation of funds under the FUSRAP program?
4. Does USACE have adequate funding within its current budget to allocate to the study, design and construction of cleanup at the West Lake Landfill site?
  - a. If not, would clean up of the site be contingent upon future appropriations under FUSRAP?
  - b. Would allocating funds to this project have any impact on ongoing cleanups at other FUSRAP sites across the country? If so, what would those impacts be?
5. Those in favor of the site's transfer have indicated they no longer want EPA involved with the cleanup.
  - a. If the site were transferred to FUSRAP, would there still be any EPA involvement?
  - b. Would USACE have full regulatory authority over the site?

Lieutenant General Thomas P. Bostick  
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6. Does the proposed legislation raise any other concerns?

Thank you for your attention to this matter. I ask that you provide a response no later than March 18, 2016. Your prompt assistance is sincerely appreciated.

Sincerely,

A handwritten signature in black ink that reads "Frank Pallone, Jr." with a stylized flourish at the end.

Frank Pallone, Jr.  
Ranking Member



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
441 G STREET, NW  
WASHINGTON, D.C. 20314-1000

MAR 22 2016

The Honorable Frank Pallone  
Ranking Member  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, DC 20515

Dear Representative Pallone:

Thank you for your March 10, 2016, letter to Lieutenant General Thomas Bostick, Chief of Engineers, regarding the West Lake Landfill Superfund Site in Bridgeton, Missouri. LTG Bostick asked that I reply on his behalf. As you are aware, the site is currently being remediated by the owner of the landfill pursuant to an order by the U.S. Environmental Protection Agency (EPA) and under a plan developed by EPA. A bill, (S. 2306) has passed the U.S. Senate that would move the responsibility for responding to radioactive contamination at the site to the Formerly Utilized Sites Remedial Action Program (FUSRAP), a program that is executed by the U.S. Army Corps of Engineers (Corps) under its Civil Works program. A corresponding bill has been introduced in the U.S. House of Representatives (HR 4100). In your letter, you asked a number of questions about these bills. Before I address each of your questions, I do want to clarify, while the Corps may respond to Congressional inquiries and questions regarding pending legislation, the Corps does not take a position for the Administration in support or opposition of proposed legislation. If the legislation were enacted, the Corps would execute the law in accordance with its requirements. For ease of reading, I have restated the questions here, along with the corresponding response.

1. According to EPA, a revised proposed Record of Decision for cleanup of the site is expected to be issued this year. If the site were transferred to FUSRAP, would the process for USACE to take over the ongoing work currently being completed by EPA be seamless?

Answer: It would not be a seamless process. The U.S. Environmental Protection Agency (EPA) is currently acting under its regulatory authorities and is overseeing a private party who is paying for and executing the work.

The authorities for the Corps are different than for the EPA. If the project is transferred to the FUSRAP program, the Corps would not be acting as a regulator. The Corps would be evaluating the site for execution under the FUSRAP program. Therefore the process and source of funding would change. As explained more fully below, this would likely make addressing the site more complex. It should be noted that EPA has the ability, under the current process, to enter into an enforceable agreement with the Corps

to assist with execution at Superfund sites. Under an already existing Support for Other Agencies program agreement, the Corps currently executes tens of millions of dollars of work for EPA every year.

1.a. What steps would USACE need to take to study, develop a plan, and implement cleanup of the site?

Answer: Both S. 2306 and H.R. 4100 would provide the Corps the authority to respond to radioactive contamination at the West Lake Landfill (WLLF) site consistent with the FUSRAP program authorities. Any non-radioactive contamination would not be within the authority of the FUSRAP program to clean up.

By moving the WLLF site into the FUSRAP program, the Corps would be required to plan and budget for any activity it might undertake with regard to the site. The FUSRAP program is a cleanup program, so the Corps would assess alternatives to address the low-level radioactive materials at the site. It would not make any broader assessments for the other materials in the landfill, nor would it address the adjacent Bridgeton Landfill. The funding needs for this site would compete for prioritization with all the other FUSRAP sites nationwide, particularly those with ongoing cleanup actions and those already in various stages of investigation. It is very likely that it would be some time before this site would be considered for inclusion in a Civil Works budget.

When funding is available, the Corps would begin by reviewing the EPA site documents including all information from the current cleanup effort by the site owner before the Corps could determine a path forward. This would include reviewing the information already generated to date through EPA's regulatory efforts, which required the preparation of a Remedial Investigation, Feasibility Study, Proposed Plan, and Record of Decision and any site owner information. The Corps would also be required to obtain permission from the current landowner to enter the property. In the FUSRAP program, because the Corps is not a regulator and the government does not own this property, permission to enter and conduct any necessary work is required from the property owner. This would be an additional process and would be necessary to allow the Corps to properly evaluate the site and conduct any work.

Any conclusions which the Corps may reach from assessing the site, reviewing information from the current cleanup efforts, and any new information from investigations which the Corps determines is necessary would involve additional time and funding. The Corps would need to initiate and conduct a cost recovery action to recapture FUSRAP expenditures through the Department of Justice (DoJ) and in cooperation with EPA, as stated in the proposed legislation. Republic Services, the current owner of the site and any other potentially responsible parties (PRPs) identified through the EPA's Superfund process, would not necessarily continue to pay for all of the actions at the site. This would be an additional process and would further increase costs to the Federal Government and would likely take considerable time given the PRPs could resist paying 100% of all costs, particularly those added by moving the site to the FUSRAP program.

1.b. What would be the timeline for this process, and how long would it take to complete?

Answer: The answer to this question depends on several variables such as the availability of funding, prioritization, and the remedy that is selected, so we are unable to answer the question at this point. We are able to generally discuss when the project could be started.

There are 24 sites currently in the FUSRAP program and three other sites that have been determined as eligible for consideration and are awaiting a final determination as to whether they will be included in FUSRAP. As stated previously, if WLLF is added, its relative priority will be ranked against the priority of other sites currently in the program. Funds available for FUSRAP must be prioritized. We do not have sufficient information to predict what priority the site might have in the program, but the earliest that the site could be programmed for funding to begin an evaluation is Fiscal Year (FY) 2018. As stated above, any proposed onsite activities could not begin until we obtained a right of entry from the landowner. Such agreements typically take a number of months or longer to negotiate and in some cases landowners have denied the Corps entry to their property.

1.c. Would shifting the site into FUSRAP accelerate cleanup of the site?

Answer: The addition of the site to the FUSRAP program would not accelerate remediation at the WLLF. The FUSRAP program would only address the clean-up of low level radiological material at the site, which is only one issue of concern at the landfill. Currently, the PRPs execute and pay for actions as directed by EPA. Transferring the site to FUSRAP would subject the site to the limitations of the FUSRAP budget and appropriations process, and its necessary prioritization with respect to the sites currently competing for the program's limited appropriations. Additionally, there is no guarantee that the ultimate cleanup actions would be different than those which would occur under the current process.

In 2008, after EPA selected a remedy to cap the site and leave contaminated material in place, advocates challenged the remedy as not being fully protective. EPA is now considering three potential alternatives: the original 2008 remedy, a partial excavation, or a full excavation of the site.

2.a. If the site were transferred to FUSRAP, would USACE select a full excavation as the remedy of choice?

Answer: At this time, the Corps cannot definitively state what action it would recommend. The Corps follows the CERCLA process and works with regulators in determining the appropriate response at a site. FUSRAP would follow the same statute and regulations as EPA and it would make use of any information already generated by EPA's process.

2.b. Is it possible that USACE would implement the 2008 remedy and cap the material in place?

Answer: While this is possible, at this time, the Corps cannot definitively state what cleanup action it would recommend. A cap in place remedy would certainly be considered as one of the options under the process.

3. Under Superfund, EPA has the authority to compel potentially responsible parties (PRPs) to either clean up contaminated sites or pay for the necessary costs. Use of this polluter pays principle ensures that taxpayers are not stuck paying for the pollution of others. EPA is currently pursuing three PRPs to pay for the cleanup of this site.

3.a. What authority does USACE have under FUSRAP to require PRPs to clean up contaminated sites? What authority does USACE have under FUSRAP to compel PRPs to pay for the necessary cleanup of contaminated sites?

Answer: It is our understanding that EPA, using its regulatory authority, intends to order the PRPs to carry out the necessary cleanup activities with hopes that this will result in a negotiated enforceable agreement. By contrast, while the FUSRAP program legislation confers lead agency authority for CERCLA response actions at FUSRAP sites to the Corps, it does not confer regulatory or enforcement authority. Such authority has never been applied to FUSRAP. The lack of authority to order PRPs to take response actions under FUSRAP is recognized in the proposed legislation, which provides that the Corps will work in cooperation with EPA and the DoJ in addressing other PRPs responsibilities at the site.

A transfer to FUSRAP would require the Corps to use appropriated funds to accomplish the remedy and then using additional appropriated funds to pursue the PRPs for cost recovery. While the legislation envisions no liability accruing to the Secretary of the Army for cleanup actions under the legislation, and does not guarantee 100% cost recovery from PRPs. The PRPs may disagree with the actions taken and may contest certain costs associated with the transfer of the program or costs associated with execution. Cost recovery is site-specific and depends on many circumstances.

b. Does USACE have the same "Enforcement First" authority as EPA to hold PRPs accountable for covering the costs of cleaning up contaminated sites?

Answer: No. Please see the above.

c. Would the ability of USACE to pursue PRPs be contingent upon appropriation of funds under the FUSRAP program?

Answer: Any costs incurred by the Corps to support the DoJ in pursuit of cost recovery from PRPs would come from the FUSRAP appropriation. DoJ's costs would be funded through its appropriations.

4. Does USACE have adequate funding within its current budget to allocate to the study, design and construction of cleanup at the West Lake Landfill site?

Answer: The recent annual appropriation to FUSRAP is approximately \$100 million. This amount is divided among the 24 sites currently in the program on a priority basis. The Corps lacks sufficient information to analyze the priority that is appropriate for WLLF, but as discussed above, the earliest that funding could be included in the budget for the WLLF is FY 18.

a. If not, would clean up of the site be contingent upon future appropriations under FUSRAP?

Answer: Yes.

b. Would allocating funds to this project have any impact on ongoing cleanups at other FUSRAP sites across the country? If so, what would those impacts be?

Answer: As discussed above, the annual appropriation to FUSRAP in recent years is approximately \$100 million. This amount is divided among the 24 sites currently in the program on a priority basis. The Corps lacks sufficient information to analyze the priority that is appropriate for WLLF, but if another project is competing for funds under the program, it is possible that funding for other sites could be affected.

5. Those in favor of the site's transfer have indicated they no longer want EPA involved with the cleanup.

a. If the site were transferred to FUSRAP, would there still be any EPA involvement?

Answer: Both bills provide that the site will remain on EPA's National Priorities List of Superfund sites. EPA is the lead regulator for sites on that list. EPA would oversee any action that would be taken under FUSRAP at this site, as well.

b. Would USACE have full regulatory authority over the site?

Answer: The Corps is not a regulatory entity under FUSRAP. Moreover, while the FUSRAP program legislation confers lead agency authority for CERCLA response actions at FUSRAP sites to the Corps, it does not confer regulatory authority.



Thank you for your questions and continued interest in the Army's Civil Works Program. If you have any questions or concerns, please feel free to contact me at 202-761-0100.

Sincerely,



Steven L. Stockton, P.E.  
Director of Civil Works